DAVID J. WEILAND #160447
Email: dweiland@ch-law.com
STEVEN C. CLARK #181050
Email: sclark@ch-law.com
COLEMAN & HOROWITT, LLP
499 W. Shaw Avenue, Suite 116
Fresno, California 93704
Telephone: (559) 248-4820
Facsimile: (559) 248-4830

Attorneys for Defendant NEIL JONES FOOD COMPANY, dba SAN BENITO FOODS

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

JOSEPH VALLEJO, VICTOR ESPERICUETA and CHRISTOPHER JONES on behalf of themselves and all others similarly situated Plaintiffs, vs. THE NEIL JONES FOOD COMPANY, dba SAN BENITO FOODS Defendant.	Case No.: 5-24-cv-06835-NW **DEFENDANT/CROSS-COMPLAINANT'S REPLY TO PLAINTIFF'S OPPOSITION TO MOTION TO DISMISS & MOTION TO STRIKE CLASS ALLEGATIONS** **Date: June 18, 2025** **Time: 9:00 a.m.** **Courtroom: 3**
THE NEIL JONES FOOD COMPANY, dba SAN BENITO FOODS Cross-Complainant, v. SUNNYSLOPE COUNTY WATER DISTRICT, a proprietary entity; ROES 1 – 10, inclusive, Cross-Defendants.	

Defendant/Cross-Complainant NEIL JONES FOOD COMPANY, dba SAN BENITO FOODS("NJFC") submits the following Memorandum of Points and Authorities in support of its Reply to the Opposition of Plaintiff's ("VALLEJO") Motion to Dismiss and Motion to Strike Allegations.

INTRODUCTION

Plaintiffs' Response and Memorandum of Law in Opposition to Defendant's Motion to Dismiss Plaintiffs' Complaint and Motion to Strike Class Allegations (the "Opposition") fails to convincingly articulate why this motion should not be granted. Plaintiffs have failed to show that they have properly alleged facts demonstrating a substantial or unreasonable interference with their use or enjoyment of property as required for a viable nuisance claim. The Complaint lacks facts which would show anything close to substantial or unreasonable interference. Rather, it provides vague allegations of odors and does not attempt to state when or where these alleged odors began but does allege that they "continue," even though the allegations all focus on a few instances when alleged Notices of Violation ("NOVs") were issued by the Monterey Bay Air Resources District ("MBARD"). (Complaint ¶ 30.) Seeking to leverage these alleged NOVs, Plaintiffs assert causes of action for private nuisance, public nuisance, and negligence. However, three instances over three years does not constitute substantial interference.

Plaintiffs have also failed to show how they have plead actual physical harm to themselves or their property to overcome the economic loss rule. Further, their arguments suggesting that their claims fit into an exception to the doctrine are non-persuasive. Lastly, Plaintiffs have not established that this matter is appropriate to be brought as a class action lawsuit as any alleged nuisance would affect each property owner or occupant differently.

Again, the parties should not have to bear the great expense of litigating this case through a class certification motion that will undoubtedly fail, and on theories of recovery that California simply does not allow. As such, the motion should be granted in its entirety.

DISCUSSION

A. Plaintiffs' Have Not Alleged Sufficient Facts to Maintain Their Nuisance Claims.

Plaintiffs have alleged that the noxious odors caused interference with their use and enjoyment of their properties. However, to survive a Rule 12(b)(6) motion to dismiss, the alleged interference must amount to a "substantial interference" and Plaintiffs must allege facts demonstrating that the interference was "unreasonable," meaning that it was "of such a nature,

duration or amount as to constitute unreasonable interference with the use and enjoyment of the land." *Helix Land Co. v. City of San Diego* (1978) 82 Cal. App. 3d 932, 950; *San Diego Gas & Elec. Co. v. Super Ct*., 13 Cal. 4th 893, 938 (1996).

Plaintiffs' claim that odors prevented them from opening windows or having barbeques do not meet this as a matter of Rule 8 pleading requirements under *Twombly/Iqbal. Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555–56 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 677–80 (2009). The California Supreme Court has noted that "each individual in a community must put up with a certain amount of annoyance, inconvenience and interference and must take a certain amount of risk in order that all may get on together. The very existence of organized society depends upon the principle of 'give and take, live and let live,' and therefore the law of torts does not attempt to impose liability or shift the loss in every case in which one person's conduct has some detrimental effect on another." *San Diego Gas & Elec.,* 13 Cal. 4th at 937–38. Plaintiffs have clearly not stated viable claims for nuisance.

B. The Economic Loss Doctrine Clearly Bars Plaintiffs' Negligence Claims.

It is well-established that California law precludes negligence claims premised on purely economic loss: "liability in negligence for purely economic losses . . . is 'the exception, not the rule' under our precedents." *S. California Gas Leak Cases* (2019) 7 Cal. 5th 391, 400 (citation omitted); see also Restatement (Third) of Torts: Liab. for Econ. Harm § 1 (2020) ("An actor has no general duty to avoid the unintentional infliction of economic loss on another.").

Again, Plaintiffs have not alleged any physical property damage or personal injuries. Rather, they seek recovery for only economic losses – "interference with the use and enjoyment of private property, loss of property values, and adverse impacts on property values." (Complaint ¶ 61.) Rather, Plaintiffs are incorrectly contending that the economic loss doctrine does not apply because Plaintiffs claim that interference with the use and enjoyment of property is never purely economic loss. (See Opposition at page 15, lines 9-10.)

However, California law is clear: The term "economic loss" is used as a "shorthand for 'pecuniary or commercial loss that does not arise from actionable physical, emotional or reputational injury to persons or physical injury to property.'" *S. California Gas Leak Cases*,

supra, 7 Cal. 5th at 398 (quotations omitted); see also Restatement (Third) of Torts: Liab. for Econ. Harm § 1 (2020) ("An economic loss or injury, as the term is used here, means a financial loss not arising from injury to the plaintiff's person or from physical harm to the plaintiff's property."). As Plaintiffs readily admit when defending their claim for damages, interference with the use and enjoyment of property is the depreciation in the rental value of the property during the relevant time. (Opposition at Section II.) Because Plaintiffs have not alleged physical property damage or personal injuries, their claims for depreciation of rental value is nothing more than financial loss not arising from an injury to Plaintiff's person or physical harm to his property, i.e., purely economic loss.

While Plaintiffs argue that their allegations of interference with use and enjoyment is a sufficient injury to support negligence claims, this proposition lacks any legal support. Plaintiff relies on *Acadia, California, Ltd. v. Herbert* (1960) 54 Cal. 2d 328, but this reliance is misplaced. Unlike Plaintiffs' negligence claims in this matter, the Plaintiff in *Acadia* was not asserting a negligence claim **but instead an intentional tort, and he alleged personal injuries resulting from defendant's actions**. As a result, the court did not address whether interference with use and enjoyment of property was an economic loss or could be recoverable under a negligence theory. At most, the case can be interpreted to allow such damages in the context of trespass and nuisance claims but not a negligence claim.

Additionally, Plaintiffs argue that California Civil Code section 1714(a) [the negligence statute] does not contain a "physical injury requirement." The California Supreme Court has held otherwise. *Southern California Gas Leak Cases* are recent, controlling, and cannot be distinguished by Plaintiffs. There the California Supreme Court discussed at length California's approach to negligence and determined that section 1714 "does not . . . impose a presumptive duty of care to guard against any conceivable harm that a negligent act might cause." 7 Cal. 5th at 399. The Court reiterated decisively that the general rule in California is "no-recovery for negligently inflicted purely economic losses." (*Id*. at 400.) The only exception the court noted was where the plaintiff and defendant have a "special relationship" (which Plaintiffs have not alleged). The Court did not distinguish between negligence claims involving products liability,

contractual issues, or interference with use and enjoyment of private property. Rather, in setting "meaningful limits on liability" in tort law, the Court focused on whether the loss was purely economic: while "foreseeability 'may set tolerable limits for most types of physical harm, it provides virtually no limit on liability for nonphysical harm.'" (*Id*. At 401 citing *Bily v. Arthur Young & Co.* (1992) 3 Cal. 4th 370, 398.)

The Court also upheld the economic loss rule because of the "line-drawing problems" that arise for determining whether to impose liability when there is no physical damage alleged with the economic loss. Faced with a seemingly random five-mile boundary for Plaintiffs' claims in that case, the court explained that it discerned "no compelling basis for us to let a business operating 4.9 miles away recover its lost profits but deny such recovery to another business operating 5.1 miles away." (*Id*. at 408.) This same reasoning applies here. The California Supreme Court has rejected an ad hoc standard for negligence claims and imposed a hard-and-fast rule that purely economic losses are not recoverable in negligence. (*Id*. at 410.)

Plaintiffs generally may seek recovery for interference with use and enjoyment of their property under a nuisance theory, but they cannot use that nuisance claim to bootstrap a negligence claim that seeks only economic losses. Because Plaintiffs have not alleged to have incurred any physical injuries or property damage from the alleged odors, they cannot sustain a claim for negligence.

C. Plaintiffs' Class Action Allegations Should be Stricken.

Plaintiffs do not cite any federal decision that has granted a plaintiff's motion to certify a class in a case alleging harm stemming only from interference with use and enjoyment of property due to emissions of odors. In the Opposition, Plaintiffs fail to grapple with the overwhelming body of federal case law denying certification in similar putative class actions (see Motion at 12-17), instead invoking inapplicable state court decisions, classes "certified" for settlement purposes only, and one readily distinguishable federal court decision. [1] Where there is no possibility that a plaintiff will be able to demonstrate that common issues of law and fact predominate, and no

[1] Plaintiffs have failed to mention counsel's less successful attempts wit California courts. In *Weiner v. Aerocraft Heat Treating Company, Inc. et al.* (Los Angeles Superior Court Case No. BC652102.), the court denied class-certification after a lengthy and costly discovery exercise. Attached hereto as Exhibit A is a true and correct copy of that order.

possibility that the class is ascertainable, striking the class allegations is appropriate. See e.g. *Stearns v. Select Comfort Retail Corp*. (N.D. Cal. 2010) 763 F. Supp. 2d 1128, 1152-53; *Tietsworth v. Sears* (N.D. Cal. 2010) 720 F. Supp. 2d 1123, 1147 (striking class allegations because proposed class was not ascertainable); *Sandoval v. Ali* (N.D. Cal. 2014) 34 F. Supp. 3d 1031, 1043–44 (striking class allegations due to overbreadth). Plaintiffs' arguments are not convincing.

The single federal case to which Plaintiffs cites demonstrates the inherent roadblocks in certifying a class alleging odors alone. *Olden v. LaFarge Corp.* was a putative class action against a cement manufacturing plant alleging personal injuries caused by toxic emissions and physical property damage including properties being "regularly covered in cement dust." (*Olden v. LaFarge Corp.* (6th Cir. 2004) 383 F.3d 495, 508.) Affirming the lower court's certification of the class, the Sixth Circuit explained why certification was proper in that case as opposed to one alleging impacts from odors alone, citing to *Ramik v. Darling International Incorporated* (E.D. Mich. 1999) 60 F. Supp. 2d 680. The *Olden* court noted that the decision to deny certification of a damages class in Ramik was based, in part, on the fact that "substantial individual proofs related to the character of the odors at each individual residence" would have been required to establish liability to plaintiff and each class member. (*Id*. at 509 citing *Ramik v. Darling Int'l, Inc*. (E.D. Mich. 1999) 60 F. Supp. 2d 680, 682 ("This court declined to certify a plaintiff class for damages . . . because the resident plaintiffs were unable to demonstrate that common issues of law and fact predominated among the claims of the individual members of the purported class.").) In *Olden*, on the other hand, "the plaintiffs' complaints are more objective, and experts will likely be able to estimate how much cement dust has fallen over each residence and the potential health effects associated with such quantity of dust." *Olden, supra,* 383 F.3d 509–10. Plaintiffs here have provided no such objective allegations that might otherwise support certification of a class.

CONCLUSION

Based on the forgoing, NJFC respectfully requests that this Court grant the Motions.

/ / / /

/ / / /

Dated: May 30, 2025

COLEMAN & HOROWITT, LLP

By: 

STEVEN C. CLARK
DAVID J. WEILAND
Attorneys for Defendant, NEIL JONES FOOD COMPANY, dba SAN BENITO FOODS

Exhibit A

ORIGINAL

LATHAM & WATKINS LLP
Michael G. Romey (State Bar No. 137993)
michael.romey@lw.com
Jamie L. Sprague (State Bar No. 287689)
jamie.sprague@lw.com
Joseph L. De Leon (State Bar No. 313477)
joseph.deleon@lw.com
355 South Grand Avenue, Suite 100
Los Angeles, California 90071-1560
Telephone: +1 213.485.1234
Facsimile: +1 213.891.8763

Attorneys for Defendants Aerocraft Heat Treating Company, Inc., Carlton Forge Works, Inc., and Press Forge Company

(See next page for additional counsel)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

ALLISON WEINER, et al.,

Plaintiffs,

v.

AEROCRAFT HEAT TREATING COMPANY, INC.; ANAPLEX CORPORATION; CARLTON FORGE WORKS, INC.; WEBER METALS, INC.; MATTCO FORGE, INC.; PRESS FORGE COMPANY; LUBECO, INC.; and DOES 1 through 300, inclusive,

Defendants.

Case No. BC652102

Related Cases: BC644520, BC650094, BC651485

Action Filed: February 28, 2017
Judge: Honorable Elihu M. Berle
Department: 6

[~~PROPOSED ORDER~~] RE:

(1) PLAINTIFFS' MOTION FOR CLASS CERTIFICATION;

(2) PLAINTIFFS' REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF MOTION FOR CLASS CERTIFICATION;

(3) CERTAIN DEFENDANTS' MOTION TO EXCLUDE DECLARATION OF DR. RANDALL BELL;

(4) DEFENDANT MATTCO FORGE, INC.'S EVIDENTIARY OBJECTIONS TO PLAINTIFFS' REQUEST FOR JUDICIAL NOTICE

(5) CERTAIN DEFENDANTS' REQUEST FOR JUDICIAL NOTICE; and

(6) PLAINTIFFS' REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF PLAINTIFFS' REPLY MEMORANDUM FILED IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

KUTAK ROCK LLP
Jad T. Davis (State Bar No. 219947)
jad.davis@kutakrock.com
Kevin J. Grochow (State Bar No. 288586)
kevin.grochow@kutackrock.com
5 Park Plaza, Suite 1500
Irvine, CA 92614-8595
Telephone: +1 949.417.0999
Facsimile: +1 949.417.5394

Attorneys for Defendant Mattco Forge, Inc.

RUTAN & TUCKER, LLP
Mark B. Frazier (State Bar No. 107221)
mfrazier@rutan.com
Lucas Hori (State Bar No. 294373)
lhori@rutan.com
611 Anton Boulevard, 14th Floor
Costa Mesa, CA 92626
Telephone: +1 714.641.5100
Facsimile: +1 714.546.9035

Attorneys for Defendant Weber Metals Inc.

CLARK HILL LLP
Christopher G. Foster (State Bar No. 119142)
cfoster@clarkhill.com
1055 West Seventh Street, Suite 2400
Los Angeles, CA 90017
Telephone: +1 213.891.9100
Facsimile: +1 213.488.1178

Attorney for Defendant Lubeco, Inc.

Plaintiffs' Motion for Class Certification; Plaintiffs' Requests for Judicial Notice in Support of Plaintiffs' Motion for Class Certification; Certain Defendants'[1] Motion to Exclude the Declaration of Dr. Randall Bell; Defendant Mattco Forge, Inc.'s Evidentiary Objections to Plaintiffs' Request for Judicial Notice; Certain Defendants'[2] Request for Judicial Notice in Support of (1) Joint Opposition to Plaintiffs' Motion for Class Certification and (2) Defendant Carlton Forge Works, Inc.'s Opposition to Plaintiffs' Motion for Class Certification (Regarding the Norman Class); and Plaintiffs' Request for Judicial Notice in Support of Plaintiffs' Reply Memorandum Filed in Support of Plaintiffs' Motion for Class Certification were heard before this Court on January 14, 2019, the Honorable Elihu M. Berle presiding. All appearances were made on the record.

For the reasons set forth at the hearing as memorialized in the court reporter's transcript attached hereto as Exhibit A, as well as the Court's minute order attached hereto as Exhibit B, the Court ordered the following:

1. Plaintiffs' Motion for Class Certification is **DENIED**.
2. Plaintiffs' Request for Judicial Notice in Support of Motion for Class Certification is **DENIED**.
3. Certain Defendants' Motion to Exclude the Declaration of Dr. Randall Bell is **DENIED**.
4. Defendant Mattco Forge, Inc.'s Evidentiary Objections to Plaintiffs' Request for Judicial Notice are **GRANTED.**
5. Certain Defendants' Request for Judicial Notice in Support of (1) Joint Opposition to Plaintiffs' Motion for Class Certification and (2) Defendant Carlton Forge Works, Inc.'s Opposition to Plaintiffs' Motion for Class Certification (Regarding the Norman Class) is **GRANTED IN PART**, and the Court takes judicial notice

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[1] Defendants Aerocraft Heat Treating Company, Inc. ("Aerocraft), Carlton Forge Works, Inc. ("Carlton Forge"), Press Forge Company ("Press Forge"), Weber Metals, Inc. ("Weber") and Lubeco, Inc.'s ("Lubeco,") filed the Motion to Exclude.

[2] Defendants, Aerocraft, Carlton Forge, Press Forge, Weber, Lubeco, and Mattco Forge, Inc. ("Mattco") filed the Request for Judicial Notice.

of Exhibits 1, 2, 3, 10, and 11 thereto. Otherwise, the Certain Defendants' Request for Judicial Notice is **DENIED.**

6. Plaintiffs' Request for Judicial Notice in Support of Plaintiffs' Reply Memorandum Filed in Support of Plaintiffs' Motion for Class Certification is **DENIED.**

7. *Katherine Craig, et al. v. Aerocraft Heat Treating Company, Inc. et. al.*, Los Angeles County Superior Court Case No. 18STCV03833 and *Allison Weiner, et al. v. Aerocraft Heat Treating Company, Inc. et al.*, Los Angeles County Superior Court Case No. BC652102 are related within the meaning of CRC 3.300(a) and transferred to Judge Elihu M. Berle in Department 6 at Spring Street Courthouse.

8. Plaintiffs Julian Sosa Jr. and Julian Sosa III's claims are dismissed without prejudice.

9. The final status conference scheduled for January 28, 2019, and non-jury trial scheduled for February 25, 2019 are vacated.

10. The Parties to the *Weiner* and *Calzada* actions are to meet and confer and submit a joint report no later than March 7, 2019. The joint report is to address the following:

    a. status of discovery;

    b. a proposed date for setting the case for trial; and

    c. trial manageability issues

11. The next status conference be set for March 14, 2019 at 9:00 a.m.

12. Defendants are to give notice.

IT IS SO ORDERED.

Dated: 1/31/19

By _____
Honorable Elihu M. Berle
Judge of the Superior Court

EXHIBIT A

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 6 — HON. ELIHU M. BERLE, JUDGE

ALLISON WEINER, ET AL., PLAINTIFFS, vs. AEROCRAFT HEAT TREATING COMPANY, INC., ET AL., DEFENDANTS.	No. BC652102 (CONSOLIDATED WITH CASE NO. BC677134) RELATED CASES: BC644520, BC650094, BC651485

REPORTER'S TRANSCRIPT OF PROCEEDINGS

MONDAY, JANUARY 14, 2019

APPEARANCES:

FOR PLAINTIFFS:
GIRARDI KEESE
BY: ROBERT FINNERTY, ESQ.
BY: JOSEPH FINNERTY, ESQ.
BY: MICHAEL KELLY, ESQ.
1126 WILSHIRE BOULEVARD
LOS ANGELES, CALIFORNIA 90017

FOR DEFENDANTS AEROCRAFT HEAT TREATING COMPANY, INC., CARLTON FORGE WORKS, INC., AND PRESS FORGE COMPANY:
LATHAM & WATKINS
BY: MICHAEL ROMEY, ESQ.
BY: JAMIE SPRAGUE, ESQ.
BY: JOSEPH DE LEON, ESQ.
355 SOUTH GRAND AVENUE
SUITE 100
LOS ANGELES, CALIFORNIA 90071

LAURIE HELD-BIEHL, CSR NO. 6781
STIPULATED REPORTER PRO TEMPORE

APPEARANCES (CONTINUED):

FOR DEFENDANT ANAPLEX CORPORATION:
CASTELLON & FUNDERBURK, LLP
BY: ALASTAIR HAMBLIN, ESQ.
811 WILSHIRE BOULEVARD
SUITE 1025
LOS ANGELES, CALIFORNIA 90017

FOR DEFENDANT WEBER METALS, INC.:
RUTAN & TUCKER, LLP
BY: MARK FRAZIER, ESQ.
BY: LUCAS HORI, ESQ.
611 ANTON BOULEVARD
SUITE 1400
COSTA MESA, CALIFORNIA 92626

FOR DEFENDANT MATTCO FORGE, INC.:
KUTAK ROCK, LLP
BY: JAD DAVIS, ESQ.
BY: JOHN-MARK JENNINGS, ESQ.
5 PARK PLAZA
SUITE 1500
IRVINE, CALIFORNIA 92614-8595

FOR DEFENDANT LUBECO, INC.:
CLARK HILL, PLC
ATTORNEYS AT LAW
BY: CHRISTOPHER G. FOSTER, ESQ.
1055 WEST SEVENTH STREET
SUITE 2400
LOS ANGELES, CA 90017

FOR THE PLAINTIFFS ERMA CALZADA, ET AL., CASE NO. TC028875:
WEBB LAW GROUP, APC
ATTORNEYS AT LAW
BY: LENDEN WEBB, ESQ.
10509 VISTA SORRENTO PKWY
SUITE 430
SAN DIEGO, CALIFORNIA 92121
(VIA COURTCALL.)

FOR THE PLAINTIFF CENTER FOR ENVIRONMENTAL HEALTH:
LEXINGTON LAW GROUP
BY: LUCAS WILLIAMS, ESQ.
503 DIVISADERO STREET
SAN FRANCISCO, CALIFORNIA 94117
(VIA COURTCALL.)

CASE NUMBER: BC652102
CASE NAME: WEINER, ET AL. V AEROCRAFT, ET AL.
LOS ANGELES, CA MONDAY, JANUARY 14, 2019
DEPARTMENT 6 HON. ELIHU M. BERLE, JUDGE
REPORTER: LAURIE HELD-BIEHL, CSR NO. 6781
TIME: A.M. SESSION
APPEARANCES: AS HERETOFORE NOTED.

THE COURT: MORNING, COUNSEL.

(VARIOUS GOOD MORNINGS.)

THE COURT: CALLING THE CASE OF WEINER VERSUS AEROCRAFT HEAT TREATMENT COMPANY.

COUNSEL, YOUR APPEARANCES.

MR. ROBERT FINNERTY: GOOD MORNING, YOUR HONOR. BOB FINNERTY FOR THE PLAINTIFF.

THE COURT: GOOD MORNING.

MR. JOSEPH FINNERTY: GOOD MORNING, YOUR HONOR. JOSEPH FINNERTY FOR THE PLAINTIFF.

THE COURT: GOOD MORNING.

MR. KELLY: MORNING, YOUR HONOR. MICHAEL KELLY FOR THE PLAINTIFF.

MR. WANG: MORNING, YOUR HONOR. ARNOLD WANG, ARIAS SANGUINETTI, ON BEHALF OF THE EGLOSSIREE NORMAN PUTATIVE CLASS.

THE COURT: GOOD MORNING.

MR. ROMEY: GOOD MORNING, YOUR HONOR. MICHAEL ROMEY FOR AEROCRAFT, PRESS FORGE AND CARLTON FORGE, DEFENDANTS.

MR. HAMBLIN: MORNING, YOUR HONOR. ALASTAIR HAMBLIN FOR ANAPLEX CORPORATION, DEFENDANT.

THE COURT: GOOD MORNING.

MR. FRAZIER: GOOD MORNING, YOUR HONOR. MARK FRAZIER FOR WEBER METALS.

THE COURT: GOOD MORNING.

MR. DAVIS: GOOD MORNING, YOUR HONOR. JAD DAVIS ON BEHALF OF MATTCO FORGE.

THE COURT: GOOD MORNING.

MR. FOSTER: GOOD MORNING, YOUR HONOR. CHRISTOPHER FOSTER ON BEHALF OF DEFENDANT LUBECO.

THE COURT: GOOD MORNING.

MR. JENNINGS: MORNING, YOUR HONOR. JOHN-MARK JENNINGS ON BEHALF OF MATTCO.

THE COURT: GOOD MORNING.

MR. HORI: GOOD MORNING, YOUR HONOR. LUCAS HORI ON BEHALF OF DEFENDANT WEBER METALS.

THE COURT: GOOD MORNING.

ANYONE ELSE? ANYONE ON COURTCALL?

THE CLERK: NO COURTCALL APPEARANCES, YOUR HONOR.

THE COURT: ALL RIGHT. THANK YOU.

COUNSEL, PLEASE HAVE A SEAT AND MAKE YOURSELVES COMFORTABLE.

I HAVE RECEIVED A PROPOSED ORDER FOR THE APPOINTMENT OF MS. LAURIE HELD-BIEHL AS COURT REPORTER PRO TEM.

ANY OBJECTIONS?

MR. ROBERT FINNERTY: NO, YOUR HONOR.

THE COURT: NOT HEARING ANY OBJECTIONS, MS. HELD-BIEHL IS HEREBY APPOINTED COURT REPORTER PRO TEM.

GOOD MORNING.

THE REPORTER: GOOD MORNING, YOUR HONOR.

THE COURT: ALL RIGHT. THE MATTER IS HERE TODAY FOR HEARING ON THE MOTION FOR CLASS CERTIFICATION.

ANYONE WISH TO BE HEARD?

OKAY.

MR. ROMEY: YOUR HONOR, MICHAEL ROMEY FOR CERTAIN OF THE DEFENDANTS.

IF THE COURT HAS ANY QUESTIONS FOR THE DEFENDANTS THAT HE WOULD LIKE TO HAVE ANSWERED, I'M HAPPY TO DO SO; OTHERWISE, I THINK THE PAPERS ARE VERY WELL DONE.

THE COURT: ALL RIGHT. THANK YOU.

ANYTHING ELSE?

ALL RIGHT. THIS MAY TAKE A WHILE; SO I BEG YOUR INDULGENCE AND PATIENCE.

THE CLERK: YOUR HONOR, MAY I TRY COURTCALL REALLY QUICK TO SEE IF THE PARTIES HAVE JOINED?

I APOLOGIZE.

THE COURT: I'M SORRY?

THE CLERK: I'M GOING TO SEE IF PARTIES JOINED COURTCALL THAT WERE ON EARLIER.

DO I HAVE LUCAS WILLIAMS ON THE LINE?

THIS IS THE CLERK. DO I HAVE LUCAS WILLIAMS ON THE LINE?

THE COURT: ANYONE APPEARING ON THE CASE OF --

MR. WILLIAMS: YES. LUCAS IS HERE.

THE COURT: CALLING THE CASE OF WEINER VERSUS AEROCRAFT.

ANYONE ON COURTCALL APPEARING ON THAT CASE?

ALL RIGHT.

MR. WEBB: YOUR HONOR, DID YOU SAY CALZADA?

THE COURT: YES. CALZADA VERSUS AEROCRAFT, TOO.

MR. WEBB: YES, YOUR HONOR. THIS IS ATTORNEY LENDEN WEBB, W-E-B-B, ON BEHALF OF THE PLAINTIFFS IN THE CALZADA MATTER.

THE COURT: GOOD MORNING. ANYONE ELSE?

ALL RIGHT. THANK YOU.

WITH REGARD TO THE MOTION FOR CLASS CERTIFICATION FILED IN THE WEINER CASE, THIS LAWSUIT ARISES FROM ALLEGED CHEMICAL EMISSIONS FROM SEVEN METAL OPERATIONS COMPANIES IN PARAMOUNT, CALIFORNIA. THE DEFENDANTS ARE AEROCRAFT HEAT TREATMENT COMPANY, ANAPLEX CORPORATION, CARLTON FORGE WORKS, MATTCO FORGE, WEBER METALS, PRESS FORGE AND LUBECO.

THERE WAS A SECOND ACTION INITIATED NAMING CARLTON FORGE AS THE SOLE DEFENDANT ALLEGING TWO CAUSES OF ACTION BASED ON NOXIOUS ODORS.

ON MARCH 16, 2018 PLAINTIFFS ALLISON WEINER, SUSAN WEINER AND EGLOSSIREE NORMAN FILED THE OPERATIVE THIRD AMENDED COMPLAINT AGAINST SEVEN OF THE DEFENDANTS.

THE PLAINTIFFS ARE ALLEGEDLY NEARBY

RESIDENTS WHO CLAIM A VARIETY OF DAMAGES ON BEHALF OF THEMSELVES AND OTHERS SIMILARLY SITUATED AS A RESULT OF INJURIES AND EMISSIONS -- AS A RESULT OF INJURIES FROM EMISSIONS FROM THE DEFENDANTS' PLANTS.

THE THIRD AMENDED COMPLAINT SEEKS RELIEF ON BEHALF OF TWO PRIMARY CLASSES: FIRST THE PROPERTY DAMAGE CLASS RELATED TO ALLEGATIONS OF TOXIC EMISSIONS FROM ALL SEVEN DEFENDANTS; AND A NORMAN CLASS RELATED TO ONLY THE NOXIOUS ODOR CLAIMS AGAINST CARLTON FORGE.

THE PLAINTIFFS HAVE FILED A MOTION FOR CLASS CERTIFICATION. IN THAT MOTION, THE PLAINTIFFS SEEK TO REPRESENT THE PUTATIVE CLASS AND SEEK TO CERTIFY SEVERAL PROPOSED CLASSES AND SUBCLASSES.

THERE'S A PROPERTY DAMAGE CLASS DESCRIBED AS "ALL PERSONS WHO OWNED RESIDENTIAL PROPERTY IN THE CITY OF PARAMOUNT WITHIN" -- "AND WITHIN A ONE-MILE RADIUS FROM DEFENDANT LUBECO," FOR WHICH THE COMPLAINT ALLEGES THAT THEY "SUFFERED DAMAGE DUE TO DEFENDANTS' COMBINED AND/OR COMMINGLED EMISSIONS OF HEXAVALENT CHROMIUM."

THERE'S A SINGLE-FAMILY RESIDENTIAL SUBCLASS, AGAIN DESCRIBED AS "ALL PERSONS WHO OWN SINGLE-FAMILY RESIDENTIAL PROPERTY IN THE CITY OF PARAMOUNT AND WITHIN ONE-MILE RADIUS FROM DEFENDANT LUBECO" -- "LUBECO."

THERE'S A MOBILE HOME PARK SUBCLASS DESCRIBED "AS ALL PERSONS WHO OWN MOBILE PROPERTY" -- "HOME PROPERTIES IN THE CITY OF PARAMOUNT WITHIN ONE

MILE OF" -- "RADIUS OF THE DEFENDANT LUBECO."

AND THERE'S A TOWNHOUSE AND CONDO SUBCLASS DESCRIBED AS "ALL PERSONS WHO OWN TOWNHOUSE, CONDOMINIUM OR APARTMENT PROPERTY IN THE CITY OF PARAMOUNT AND WITHIN ONE-MILE RADIUS OF DEFENDANT LUBECO."

AND THERE'S THE NORMAN CLASS DESCRIBED AS "ALL OWNERS AND/OR OCCUPANTS AND/OR RENTERS OF RESIDENTIAL PROPERTY WITHIN ONE MILE OF DEFENDANT CARLTON FORGE WORKS' FACILITY PROPERTY BOUNDARY, WHO LIVED THERE THREE YEARS PRIOR TO FILING THE INITIAL COMPLAINT."

PRELIMINARILY, PLAINTIFFS REQUEST THE COURT TO TAKE JUDICIAL NOTICE OF 34 DOCUMENTS FILED IN SUPPORT OF THEIR MOTION. THE DOCUMENTS INCLUDE VARIOUS TEST REPORTS IN THE DISTRICT, VARIOUS LETTERS FROM THE PUBLIC HEALTH DEPARTMENT, VARIOUS NEWS RELEASES, WIND ROSE DATA FROM THE CITY OF PARAMOUNT, CENSUS DATA, A PUBLIC HEALTH DEPARTMENT FAQ PAGE.

AND DEFENDANTS REQUEST JUDICIAL NOTICE OF 13 DOCUMENTS IN SUPPORT OF THEIR OPPOSITION, INCLUDING VARIOUS COURT FILINGS, GOOGLE LAW PRINTOUTS, A LETTER FROM THE PARAMOUNT CITY COUNCIL, REPORT ON BUDGET.

AND ON REPLY, PLAINTIFFS REQUEST JUDICIAL NOTICE OF FOUR ADDITIONAL DOCUMENTS, ALL HEALTH RISK ASSESSMENTS INVOLVING ANAPLEX AND AEROCRAFT.

THE COURT MAY TAKE JUDICIAL NOTICE OF COURT FILINGS, AND THAT IS THE FACT THAT THE DOCUMENTS HAVE FILED, NOT FOR THE TRUTH OF THE MATTERS.

ALL OTHER DOCUMENTS, REQUESTS FOR JUDICIAL NOTICE IS DENIED; THEY ALL CONTAIN HEARSAY INFORMATION.

IN THE CODE OF CIVIL PROCEDURE, SECTION 382, CLASS ACTIONS ARE AUTHORIZED "WHEN THE QUESTION IS ONE OF COMMON OR GENERAL INTEREST, OF MANY PERSONS, OR WHEN THE PARTIES ARE NUMEROUS AND IT IS IMPRACTICABLE TO BRING THEM ALL BEFORE THE COURT."

THE SEMINAL CASE ON THE STANDARDS TO APPLY TO CLASS ACTIONS CERTIFICATION IS THE SUPREME COURT DECISION IN SAV-ON DRUGS VERSUS SUPERIOR COURT, 2004, 34 CAL. 4TH 319, IN WHICH THE SUPREME COURT STATED "THE PARTY SEEKING CERTIFICATION HAS THE BURDEN OF ESTABLISHING THE EXISTENCE OF BOTH AN ASCERTAINABLE CLASS AND A WELL-DEFINED COMMUNITY OF INTEREST AMONG CLASS MEMBERS. THE 'COMMUNITY OF INTEREST' REQUIREMENT EMBODIES THREE FACTORS: (1) PREDOMINANT COMMON QUESTIONS OF LAW OR FACT; (2) CLASS REPRESENTATIVES WITH CLAIMS OR DEFENSES TYPICAL OF THE CLASS; AND (3) CLASS REPRESENTATIVES WHO CAN ADEQUATELY REPRESENT THE CLASS."

THE SUPREME COURT CONTINUED.

"THE CERTIFICATION QUESTION IS 'ESSENTIALLY A PROCEDURAL ONE THAT DOES NOT ASK WHETHER AN ACTION IS LEGALLY OR FACTUALLY MERITORIOUS'. A TRIAL COURT RULING ON A CERTIFICATION MOTION DETERMINES 'WHETHER...THE ISSUES WHICH MAY BE JOINTLY TRIED, WHEN COMPARED WITH THOSE REQUIRING SEPARATE ADJUDICATION, ARE SO NUMEROUS OR SUBSTANTIAL THAT THE MAINTENANCE OF A CLASS ACTION WOULD BE ADVANTAGEOUS TO THE JUDICIAL PROCESS AND TO THE

LITIGANTS'."

THE SUPREME COURT CONTINUED.

"AS THE FOCUS IN A CERTIFICATION DISPUTE IS ON WHAT TYPE OF QUESTIONS, COMMON OR INDIVIDUAL, ARE LIKELY TO ARISE IN THE ACTION, RATHER THAN ON THE MERITS OF THE CASE, IN DETERMINING WHETHER THERE IS SUBSTANTIAL EVIDENCE TO SUPPORT A TRIAL COURT'S CERTIFICATION ORDER, WE CONSIDER WHETHER THE THEORY OF RECOVERY ADVANCED BY THE PROPONENTS OF CERTIFICATION IS, AS AN ANALYTICAL MATTER, LIKELY TO PROVE AMENABLE TO CLASS TREATMENT."

AND "REVIEWING COURTS CONSISTENTLY LOOK TO THE ALLEGATIONS OF THE COMPLAINT AND THE DECLARATIONS OF THE ATTORNEYS REPRESENTING THE PLAINTIFF CLASS TO RESOLVE THIS QUESTION."

SO ADDRESSING THE FACTORS WHICH THE COURT MAY AND MUST CONSIDER ON A MOTION FOR CLASS CERTIFICATION, FIRST WE HAVE THE ISSUE OF ASCERTAINABILITY OF NUMEROSITY. THE CLASS MUST BE ASCERTAINABLE AND IT MUST BE SUFFICIENTLY NUMEROUS.

WHEN DETERMINING WHETHER A CLASS IS ASCERTAINABLE, THE COURT LOOKS AT, FIRST, THE CLASS DEFINITION; SECONDLY, THE SIZE OF THE CLASS; AND, THIRD, THE MEANS AVAILABLE FOR IDENTIFYING THE CLASS MEMBERS, CITING REYES VERSUS SAN DIEGO COUNTY BOARD OF SUPERVISORS, 1987, 196 CAL. APP. 3RD 1263.

AN ASCERTAINABLE CLASS IS CHARACTERIZED BY A CLEAR, OBJECTIVE DEFINITION. SUFFICIENT RECORDS MUST BE AVAILABLE TO IDENTIFY CLASS MEMBERS AT THE REMEDIAL

STAGE.

AT THE THRESHOLD, THE COURT NOTES THAT PLAINTIFFS' PROPOSED PROPERTY DAMAGE CLASS DEFINITION LACKS PRECISION. THE DEFINITION STATES, IN RELEVANT PART, QUOTE, "ALL PERSONS WHO OWN RESIDENTIAL PROPERTY IN THE CITY OF PARAMOUNT AND WITHIN A ONE-MILE RADIUS FROM DEFENDANT LUBECO, INC."

ON ITS FACE, THE DEFINITION WOULD INCLUDE ONLY THOSE PROPERTIES THAT ARE BOTH WITHIN THE CITY OF PARAMOUNT AND WITHIN ONE MILE OF LUBECO; HOWEVER, THE GEOGRAPHICAL REGION SET FORTH IN THE MAP ATTACHED TO THE FINNERTY DECLARATION SUGGESTS THAT PLAINTIFFS INTENDED TO DEFINE THE CLASS OF OWNERS OF PROPERTY WITHIN THE CITY OF PARAMOUNT OR WITHIN ONE MILE OF LUBECO.

BUT SETTING ASIDE THAT AMBIGUITY, THE COURT WILL ADDRESS WHETHER THE PARTIES' REFERENCE TO GEOGRAPHICAL BOUNDARIES IN THE INCLUDED MAP ARE SUFFICIENT TO ESTABLISH ASCERTAINABILITY.

DEFENDANTS ARGUE THAT THE GEOGRAPHIC REGION IS ARBITRARY AND THE PLAINTIFFS FAIL TO MEET THEIR BURDEN TO ESTABLISH ASCERTAINABILITY.

THE DEFENDANTS RELY ON THE CASE OF BROOKS VERSUS DARLING INTERNATIONAL FROM THE EASTERN DISTRICT OF CALIFORNIA, REPORTED IN WESTLAW AT 1198542, PAGE 7, AND THE CASE OF AKKERMAN VERSUS MECTA CORP, 2007, 152 CAL. APP. 4TH 1094 AT 1100, FOR THE PROPOSITION THAT PLAINTIFFS MUST ESTABLISH A "REASONABLE RELATIONSHIP BETWEEN THE PROPOSED BOUNDARY AND THE DEFENDANTS'

ALLEGEDLY HARMFUL ACTIVITIES" BY SUBMITTING "SCIENTIFIC OR OBJECTIVE EVIDENCE WHICH CLOSELY TIES THE SPREAD OF THE ALLEGED POLLUTION OR CONTAMINATION TO THE PROPOSED CLASS BOUNDARIES."

IN REPLY, PLAINTIFFS ATTEMPT TO DISTINGUISH THE BROOKS CASE BY REASONING HOW FEDERAL LAW REQUIRES COURTS TO CONSIDER THE MERITS OF CLASS CERTIFICATION MOTION BUT IN CALIFORNIA COURTS MAY NOT CONSIDER THE MERITS OF THE ACTION AT THE CERTIFICATION STAGE.

PLAINTIFFS ARGUE THAT RELIANCE ON THE BROOKS CASE WOULD RESULT IN THIS COURT IMPROPERLY CONSIDERING THE MERITS. AND IN ANY EVENT, PLAINTIFFS HAVE PRESENTED EVIDENCE THAT SUPPORTS THE CONTENTION THAT PLAINTIFFS' PROPERTIES WITHIN THE SPECIFIED BOUNDARY HAVE BEEN CONTAMINATED BY DEFENDANTS' CONDUCT IN A UNIFORM WAY THAT IS IDEAL FOR CLASS CERTIFICATION.

FIRST, THE COURT NOTES ON PLAINTIFFS' PROPOSITION THAT A CALIFORNIA COURT WILL NOT DETERMINE THE MERITS OF THE CASE AT THE CLASS CERTIFICATION, ALTHOUGH IT IS GENERALLY TRUE, IT IS NOT AN ABSOLUTE ACCURATE STATEMENT.

CALIFORNIA COURTS HAVE RECOGNIZED THAT "ISSUES AFFECTING THE MERITS OF THE CASE MAY BE ENMESHED WITHIN CLASS ACTION REQUIREMENTS." FOR EXAMPLE, THE BRINKER CASE, BRINKER VERSUS SUPERIOR COURT, 2012, 53 CAL. 4TH 1004. AND THAT IS "WHEN EVIDENCE OR LEGAL ISSUES GERMANE TO THE CERTIFICATION QUESTION BEAR AS WELL ON ASPECTS OF THE MERITS, A COURT MAY PROPERLY

EVALUATE THEM."

IN ANY EVENT, A GENERAL RELIANCE ON THE PRINCIPLES ANNUNCIATED IN BROOKS DOES NOT REQUIRE THIS COURT TO MAKE ANY MERITS DETERMINATION AT THIS STAGE.

AND PLAINTIFFS MAKING THE DISTINCTION FROM THE BROOKS CASE DOES NOT ABSOLVE PLAINTIFFS OF THE BURDEN TO OFFER EVIDENCE SHOWING HOW PLAINTIFFS CAN ASCERTAIN THE CLASS MEMBERS WHOSE PROPERTY VALUES WERE AFFECTED BY THE ALLEGED CONTAMINANTS EMITTED BY DEFENDANTS AND THEREBY PROPERLY DEFINE THE CLASS.

IT IS THAT ANALYSIS WHERE THE BROOKS CASE IS PARTICULARLY INSTRUCTIVE AS BROOKS DEALT WITH THE ASCERTAINABILITY ISSUE IN TERMS OF THE DEFINITENESS.

IN THE BROOKS CASE, THE DEFENDANT OPERATED AN ANIMAL PROCESSING FACILITY LOCATED IN THE MIDDLE OF AN INDUSTRIAL AREA. PLAINTIFFS, WHO SOUGHT TO REPRESENT PROFESSIONAL OWNERS AND OCCUPIERS IN THE NEIGHBORHOOD, FILED SUIT AGAINST DEFENDANT FOR INFUSING THE NEIGHBORHOOD WITH NOXIOUS ODORS.

PLAINTIFFS FILED A MOTION TO CERTIFY A CLASS OF OWNER/OCCUPIERS WHO LIVED WITHIN A ONE-AND-A-HALF-MILE RADIUS FROM DEFENDANT'S FACILITY. THE BROOKS PLAINTIFFS ARGUE THAT THE CLASS MEMBERS ARE CERTAINLY ASCERTAINABLE BASED UPON THEIR PROPOSED ONE-AND-A-HALF-MILE RADIUS CLASS DEFINITION.

DEFENDANT ESSENTIALLY ARGUED THAT, IN A LITERAL SENSE, RESIDENTS WITHIN A ONE-AND-A-HALF-MILE RADIUS WOULD BE ASCERTAINABLE; HOWEVER, SIMPLY STAKING

OUT A GEOGRAPHIC RADIUS DOES NOT MEET THE BURDEN OF ASCERTAINABILITY IF THE GEOGRAPHIC AREA BEARS NO REASONABLE RELATIONSHIP TO THE HARM ALLEGED. THE DEFENDANT CONTENDED THAT PLAINTIFFS DID NOT MEET THAT BURDEN AS "THE ONE-AND-A-HALF-MILE RADIUS IS BASELESS, IMPROPER AND PURELY SPECULATIVE," RESULTING IN A CLASS DEFINITION WHICH IS OVERBROAD AND, THUS, NOT ASCERTAINABLE.

THE BROOKS COURT AGREED WITH THE DEFENSE, FINDING THAT THE CLASS WAS NOT ASCERTAINABLE AND DENYING CERTIFICATION.

THE COURT FIRST NOTED THAT THE ASCERTAINABILITY DETERMINATION IS "MEANT TO ENSURE THE PROPOSED CLASS DEFINITION WILL ALLOW THE COURT TO EFFICIENTLY AND OBJECTIVELY ASCERTAIN WHETHER A PARTICULAR PERSON IS A CLASS MEMBER."

THE COURT NEXT NOTED THAT "AN ADEQUATE BASIS FOR A PROPOSED CLASS DEFINITION IS UNIQUELY IMPORTANT IN CLASS ACTION CASES PRESENTING TOXIC TORT OR NUISANCE CLAIMS BASED ON AN ALLEGED ENVIRONMENTAL HARM."

CITING TO VARIOUS FEDERAL CASES FROM AROUND THE COUNTRY, INCLUDING FROM THE CENTRAL DISTRICT OF CALIFORNIA, THE COURT OFFERED THE FOLLOWING FRAMEWORK, QUOTE, "OFTEN AN OBJECTIVE CHARACTERIZATION OF EXPOSURE TO A PARTICULAR SUBSTANCE DEFINES CLASS MEMBERS. OTHER TIMES, COURTS DEFINE CLASSES BY GEOGRAPHICAL BOUNDARIES, BUT IN SUCH CIRCUMSTANCES, COURTS OFTEN SEEK A REASONABLE RELATIONSHIP BETWEEN THE PROPOSED BOUNDARY

AND THE DEFENDANTS' ALLEGED HARMFUL ACTIVITIES. REGARDLESS, COURTS HAVE REJECTED PROPOSED CLASSES WHERE PLAINTIFFS FAILED TO 'IDENTIFY ANY LOGICAL REASON...FOR DRAWING THE BOUNDARIES WHERE THEY DID. USUALLY, SCIENTIFIC OR OBJECTIVE EVIDENCE CLOSELY TIES THE SPREAD OF THE ALLEGED POLLUTION OR CONTAMINATION TO THE PROPOSED CLASS BOUNDARIES'."

THE BROOKS COURT APPLIED THIS FRAMEWORK TO THE FACTS OF THE CASE, FINDING THAT THE "ONE-AND-A-HALF-MILE RADIUS ASPECT OF THE CLASS DEFINITION HAS NO ACCEPTABLE BASIS IN OBJECTIVE FACT AND IS THEREFORE ARBITRARY."

THE COURT REASONED THAT "NOTHING IN THE EXPERT REPORTS BEFORE THE COURT INDICATES ANY RATIONALE BEHIND PLAINTIFFS' CHOOSING OF A ONE-AND-A-HALF-MILE RADIUS AS THE GEOGRAPHIC BOUNDARY FOR THE PROPOSED CLASS."

THE COURT CONTINUED, QUOTE, "PLAINTIFFS' COUNSEL BASED THE DEFINITION OF THE CLASS NOW PROPOSED FOR CERTIFICATION, NOT UPON ANY PRELIMINARY FINDING MADE BY THEIR EXPERTS OR UPON A THOROUGH ANALYSIS OF A DETAILED SURVEY OF THOSE POSSIBLY IMPACTED AREAS, BUT RATHER UPON THEIR OWN INTERPRETATION OF THE LIMITED INFORMATION AVAILABLE TO THEM."

THE PRINCIPLES OF THE BROOKS CASE WERE ALL SUPPORTED BY THOMPSON VERSUS AUTOMOBILE CLUB OF SOUTHERN CALIFORNIA, 2013, 217 CAL. APP. 4TH 719.

IN THIS CASE, PLAINTIFFS HAVE FAILED TO

SUBMIT ANY SCIENTIFIC EVIDENCE, OR ANY EVIDENCE AT ALL, SUPPORTING THE ARBITRARY GEOGRAPHICAL BOUNDARIES OF THE PROPOSED CLASS. INSTEAD OF PROVIDING SUCH EVIDENCE, THE PLAINTIFFS CONTEND ONLY THAT THE CITY OF PARAMOUNT AND A GEOGRAPHICAL AREA NORTH OF LONG BEACH HAVE BEEN IDENTIFIED BY SEVERAL ADMINISTRATIVE AGENCIES, INCLUDING THE LOS ANGELES DEPARTMENT OF PUBLIC HEALTH, THE SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT, AS AREAS AT RISK FOR EXPOSURE TO HEXAVALENT CHROMIUM AND OTHER HARMFUL CONTAMINANTS.

HOWEVER, UPON REVIEW OF THE EVIDENCE CITED, THE MONITORING SIMPLY DETECTED HEXAVALENT CHROMIUM AT CERTAIN MONITORING CITY SITES -- ITS MONITORING SITES, WHICH WERE OFTEN NEAR THE INDUSTRIAL FACILITIES AND NONE OF WHICH APPEARED AT RESIDENTIAL PROPERTIES; IN OTHER WORDS, THE MONITORING DATA COVERS ONLY A SMALL PORTION OF THE PROPERTY DAMAGE PROPOSED CLASS AREA.

PLAINTIFFS COULD HAVE, THEORETICALLY, SET FORTH EXPERT OR OTHER OBJECTIVE EVIDENCE TO ESTABLISH THAT THE PARAMETERS OUTLINED BY PLAINTIFFS' MAP, WHICH APPEARED TO HAVE BEEN CREATED BY COUNSEL, BEAR SOME REASONABLE RELATIONSHIP TO THE ALLEGED PLUME OF HEXAVALENT CHROMIUM; HOWEVER, PLAINTIFFS OFFERED A DECLARATION FROM A REAL ESTATE APPRAISER, DR. RANDALL BELL, WHO OFFERED NO SUCH OPINION.

INSTEAD, DR. BELL'S OPINION AMOUNTS TO NOTHING MORE THAN A DISTILLED PROPOSITION THAT PROPERTIES AFFECTED BY A PLUME WOULD RESULT IN A

PROPERTY DEVALUATION AND THE AFFECTED AREAS WOULD EXHIBIT COMMONALITIES; HOWEVER, THIS DOES NOT PROVIDE THE LOGICAL NEXUS NECESSARY BETWEEN THE DISPERSION OF THE HAZARDOUS MATERIALS AND THE PROPOSED CLASS BOUNDARIES, OR BETWEEN THOSE TWO ISSUES THAT HAVE HAD ANY ACTUAL EFFECT ON THE PROPERTY VALUES LOCATED WITHIN THE CLASS BOUNDARIES.

AT DR. BELL'S DEPOSITION HE TESTIFIED THAT HE COULD NOT PERFORM THE MASS APPRAISAL ANALYSIS THAT HE PROPOSES WITHOUT THE SCIENTIFIC BASIS FOR CONTAMINATION OF THE ACTUAL AREA AFFECTED, A SCIENTIFIC BASIS WHICH IS SIMPLY MISSING FROM PLAINTIFFS' MOVING PAPERS. AND, SECOND, THAT DR. BELL WAS SOMEWHAT UNQUALIFIED TO INTERPRET THE RAW SCIENTIFIC DATA SUBMITTED BY PLAINTIFFS IN SUPPORT OF THEIR MOTION.

PLAINTIFFS APPARENTLY REALIZED THAT THEY HAD PROVIDED NO MEANS FOR THE COURT OR DEFENDANTS TO DETERMINE WHICH, IF ANY, OF THESE GEOGRAPHIC BOUNDARIES BEAR ANY A RELATIONSHIP TO THE ALLEGED CONTAMINATION. AND, THEREFORE, IN SUPPORT OF THEIR REPLY BRIEF, PLAINTIFFS SUBMITTED A FEW HUNDRED PAGES OF ADDITIONAL EVIDENCE, INCLUDING FOUR ADDITIONAL HEALTH RISK ASSESSMENTS REGARDING ANAPLEX AND AEROCRAFT, AND A DECLARATION OF DR. RYER-POWDER, WHO APPARENTLY REVIEWED THOSE DOCUMENTS.

THE NEW DECLARATION, HOWEVER, IS PROBLEMATIC. IT DOES NOT ADVANCE PLAINTIFFS' POSITION FOR A NUMBER OF REASONS.

SETTING ASIDE THE PROPRIETY OF OFFERING NEW EVIDENCE ON REPLY, DR. RYER-POWDER'S DECLARATION GENERALLY LACKS FOUNDATION AS TO A SUPPOSED PERSONAL INVESTIGATION OR KNOWLEDGE. AS ESSENTIALLY ADMITTED BY DR. RYER-POWDER, HER DECLARATION IS PRIMARILY A DIRECT RESPONSE TO THE DECLARATION OF DR. BARBARA BECK SUBMITTED BY DEFENDANTS IN SUPPORT OF THEIR OPPOSITION, BUT DOES NOT ESTABLISH THE REQUISITE LOGICAL NEXUS THAT IS NECESSARY, AS PREVIOUSLY DISCUSSED.

DR. RYER-POWDER CONCLUDES THAT THERE IS ADEQUATE DATA AND GOVERNMENT AGENCY REVIEW AND APPROVED HEALTH RISK EVALUATIONS TO DEMONSTRATE THAT THERE IS A RELATIONSHIP BETWEEN HEXAVALENT CHROMIUM IN THE AIR AND THE BOUNDARIES DEFINED BY THE CLASS DUE TO EMISSIONS FROM DEFENDANTS' FACILITIES AND A SIGNIFICANT CANCER RISK TO PLAINTIFFS WHEN THEY'RE NEAR THE CLASS.

YET, THE PARAGRAPHS THAT FOLLOW THAT DISCUSSION, WHICH OSTENSIBLY SUPPORT THE VERDICT OF DR. RYER-POWDER, AMOUNT TO ESSENTIALLY NOTHING MORE THAN SUMMARIES OF WHAT THE DOCUMENTS THAT SHE REFERRED TO CONTAIN. THOSE SUMMARIES DISCUSS THE RISK AREAS IN TERMS OF TENS OF KILOMETERS IN VARIOUS DIRECTIONS FROM THE ALLEGED EMISSION SOURCES.

THIS, IN FACT, CUTS AGAINST ESTABLISHING A REASONABLE RELATIONSHIP BETWEEN THE PROPOSED CLASS BOUNDARIES AND THE ALLEGED CONTAMINATION. EVEN SETTING ASIDE THAT THE CLASS BOUNDARIES APPEAR TO CAPTURE ONLY A FRACTION OF THE AFFECTED PROPERTIES BASED UPON

DR. RYER-POWDER'S OWN SUMMARIES, NO EXPLANATION IS GIVEN AS TO WHY THE POLLUTANTS WOULD SIMPLY STOP AT THE PARAMOUNT CITY LIMITS OR WHY PROPERTIES MERE BLOCKS AWAY FROM SOME OF THE HIGHEST CONCENTRATIONS OF THE MEASURABLE EMISSIONS WOULD NOT BE INCLUDED IN THE CLASS BOUNDARIES.

FURTHERMORE, NOTHING IS DISCUSSED ABOUT THE ARBITRARY ONE-MILE RADIUS SURROUNDING LUBECO. AND DR. RYER-POWDER'S ONLY STATEMENT REGARDING LUBECO IS TANTAMOUNT TO A SIMPLE OBSERVATION THAT THE DISTRICT ISSUED A NOTICE OF VIOLATION TO LUBECO ON MAY 22, 2017, REGARDING HEXAVALENT CHROMIUM.

IN OTHER WORDS, DR. RYER-POWDER DOES NOT FILL IN THE EXPOSED SCIENTIFIC GAPS. SHE HAS NOT PROVIDED A PLUME MAP OR AIR DISPERSION MODEL OR OTHERWISE SHOWN THAT THE GEOGRAPHIC BOUNDARIES OF THE ALLEGED CONTAMINATION REASONABLY RELATE TO EACH OF THE SEVEN SEPARATE DEFENDANT FACILITIES; IN FACT, SHE DOES NOT SO MUCH AS EVEN OPINE THAT SUCH A MODEL WOULD BE POSSIBLE.

IN SUM, PLAINTIFFS HAVE NOT SET FORTH ANY EVIDENCE, THROUGH ANY EXPERT REPORT, DECLARATION, OR OTHERWISE, THAT INDICATES A REASONABLE BASIS BEHIND THE CHOSEN GEOGRAPHIC BOUNDARIES FOR THE PROPOSED CLASS. INDEED, ASPECTS OF THE EXPERT TESTIMONY AND/OR STATEMENTS ACTUALLY CUT AGAINST THE NOTION THAT THE PROPOSED GEOGRAPHICAL BOUNDARIES RELATE TO THE ALLEGED CONTAMINATION.

EVEN SETTING ASIDE THE AMBIGUOUS CLASS DEFINITIONS, THE MAP ITSELF IS SIMPLY ATTACHED TO AN ATTORNEY DECLARATION WITH NO MORE EXPLANATION EXCEPT TO SAY THAT IT IS AN ILLUSTRATIVE MAP OF THE CLASS BOUNDARIES FOR THE PROPOSED PROPERTY DAMAGE CLASS AND ASSOCIATED SUBCLASSES.

ESSENTIALLY, NO ANALYSIS OR EVIDENCE IS PROVIDED AS TO THE ASCERTAINABILITY OF THE MEMBERS OF THE NORMAN CLASS REGARDING THE NOXIOUS ODOR ASSOCIATED WITH CARLTON FORGE'S FACILITY; IN OTHER WORDS, INSTEAD OF ESTABLISHING ASCERTAINABILITY BY OFFERING EXPERT OR OBJECTIVE EVIDENCE SHOWING A NEXUS BETWEEN THE DRAWN GEOGRAPHIC BOUNDARIES AND THE ALLEGED PLUME, PLAINTIFFS RELY UPON THEIR OWN INTERPRETATION OF LIMITED INFORMATION AVAILABLE TO THEM.

AS IN THE BROOKS CASE, THIS WILL NOT CARRY THE DAY; ACCORDINGLY THE COURT CONCLUDES THAT PLAINTIFFS HAVE FAILED TO ADEQUATELY DEFINE AN ASCERTAINABLE PROPOSED CLASS.

AS TO THE SECOND FACTOR TO BE CONSIDERED ON CLASS CERTIFICATION, NUMEROSITY, NO CERTAIN NUMBER IS REQUIRED AS A MATTER OF LAW FOR THE MAINTENANCE OF A CLASS ACTION. TO BE CERTIFIED, A CLASS MUST BE NUMEROUS IN SIZE, SUCH THAT IT IS "IMPRACTICABLE TO BRING THEM ALL BEFORE THE COURT"; HOWEVER, IMPRACTICABILITY DOES NOT MEAN IMPOSSIBILITY BUT ONLY A DIFFICULTY OR INCONVENIENCE OF JOINING ALL MEMBERS OF THE CLASS.

CALIFORNIA CASE LAW INDICATES THAT EVEN AS

FEW AS 10 OR 28 MEMBERS CAN SATISFY THE NUMEROSITY REQUIREMENT.

IN THE PRESENT CASE, PLAINTIFFS ASSERT THAT THE SIZE OF THE CLASS AND SUBCLASS IS WELL OVER 1,000 HOUSING UNITS AND EVEN MORE INDIVIDUAL PERSONS OCCUPYING SAID UNITS. PLAINTIFFS STATE THAT AS OF 2010 THERE WERE 14,571 HOUSING UNITS WITHIN THE CITY OF PARAMOUNT, OF WHICH 6,024 WERE OWNER OCCUPIED.

DEFENDANTS DO NOT REASONABLY DISPUTE THE NUMEROSITY REQUIREMENT.

HERE, IF THESE THOUSANDS OF INDIVIDUALS BELONG IN A CLASS AS DEFINED, THE CLASS WOULD LIKELY BE SUFFICIENTLY NUMEROUS; HOWEVER, UNDER THE PRESENT CIRCUMSTANCES, THE ISSUE OF NUMEROSITY SUBSTANTIALLY OVERLAPS WITH THE ISSUE OF ASCERTAINABILITY.

GIVEN THE DEFICIENCIES ALREADY DISCUSSED, IT IS UNCLEAR HOW MANY OF THE INDIVIDUAL PROPERTIES BELONG IN THE CLASS; THUS, WHETHER NUMEROSITY CAN BE ESTABLISHED IS FAR MORE SPECULATIVE AND QUESTIONABLE AND MAY ACT AS AN IMPEDIMENT TO CERTIFICATION ALSO.

TURNING TO THE NEXT FACTOR TO BE CONSIDERED ON A MOTION FOR CLASS CERTIFICATION, AND THAT IS COMMUNITY OF INTEREST.

THERE ARE THREE ELEMENTS THAT EMBODY THE COMMUNITY OF INTEREST REQUIREMENT: FIRST, "PREDOMINANT COMMON QUESTIONS OF LAW OR FACT"; SECONDLY, "CLASS REPRESENTATIVES WITH CLAIMS OR DEFENSES TYPICAL OF THE CLASS"; AND THIRD, "CLASS REPRESENTATIVES WHO CAN

ADEQUATELY REPRESENT THE CLASS."

THE CALIFORNIA SUPREME COURT HELD IN THE SAV-ON CASE THAT THE CENTRAL ISSUE IN A CLASS CERTIFICATION MOTION IS WHETHER THE QUESTIONS THAT WILL ARISE IN THE ACTION ARE "COMMON OR INDIVIDUAL," NOT THE PLAINTIFFS' LIKELIHOOD OF SUCCESS ON THE MERITS.

A CLASS ACTION IS NOT "PERMITTED IF EACH MEMBER IS REQUIRED TO 'LITIGATE SUBSTANTIAL AND NUMEROUS FACTUALLY UNIQUE QUESTIONS' BEFORE RECOVERY MAY BE ALLOWED," CITING ARENAS VERSUS EL TORITO, 2010, 183, CAL. APP. 4TH 423. "IF A CLASS ACTION WILL SPLINTER INTO INDIVIDUAL TRIALS, COMMON QUESTIONS DO NOT PREDOMINATE AND LITIGATION OF THE ACTION IN THE CLASS FORMAT IS INAPPROPRIATE."

IN THE PRESENT CASE, PLAINTIFFS' PRIMARY APPROACH TO RECOVERY RESTS ON THE MASS TORT THEORIES WITH RESPECT TO PROPERTY DAMAGE DUE TO CONTAMINATION, AND NEGLIGENCE AND NUISANCE DUE TO NOXIOUS ODORS, RESULTING IN PROPERTY DAMAGE, DEVALUATION AND LOSS OF USE AND ENJOYMENT.

DEFENDANTS ARGUE THAT CALIFORNIA COURTS HAVE LONG REFUSED TO CERTIFY MASS TORT PROPERTY DAMAGE CASES. THIS IS IN NO SMALL PART BECAUSE, ACCORDING TO DEFENDANTS, INDIVIDUAL QUESTIONS OF LAW AND FACT WILL PREDOMINATE OVER COMMON QUESTIONS. SPECIFICALLY, DEFENDANTS CONTEND THAT PLAINTIFFS HAVE COMPLETELY FAILED TO SHOW HOW THE ESTABLISHMENT OF LIABILITY, AND SPECIFICALLY CAUSATION, IS AMENABLE TO COMMON PROOF FOR

CLASS-WIDE TREATMENT GIVEN THE FOLLOWING:

THE VAST DIVERSITY AMONG THE THOUSANDS OF POTENTIAL PROPERTIES; THE RANGE OF DEFENDANTS' FACILITIES AND THE UNKNOWN INTERPLAY BETWEEN PARTICULAR FACILITIES AND THE PROPERTIES; THE SEEMINGLY ENDLESS AMOUNT OF EXTERNAL VARIABLES, INCLUDING TOPOGRAPHY, GEOGRAPHY, STRUCTURAL IMPEDIMENTS, PLANTS, TREES AND OTHER CONTAMINANT CONTRIBUTORS.

PLAINTIFFS, ON THE OTHER HAND, ARGUE THAT PREDOMINANCE IS ROUTINELY FOUND IN MASS TORT CASES, CITING TO THE SIXTH CIRCUIT'S OPINION IN STERLING VERSUS VELSICOL CHEMICAL. THAT'S SIXTH CIRCUIT 1988, 855 F.2ND 1188.

PLAINTIFFS STATE, QUOTE, IN MASS TORT ACCIDENTS, THE FACTUAL AND LEGAL ISSUES OF A DEFENDANT'S LIABILITY DO NOT DIFFER DRAMATICALLY FROM ONE PLAINTIFF TO THE NEXT. AND NO MATTER HOW INDIVIDUALIZED THE ISSUES OF DAMAGES MAY BE, THESE ISSUES MAY BE RESERVED FOR INDIVIDUAL TREATMENT WITH QUESTIONS OF LIABILITY TRIED AS A CLASS ACTION, CLOSE QUOTE.

THE STERLING CASE CITED BY PLAINTIFFS, WHICH HELD THAT A TRIAL COURT DID NOT ABUSE ITS DISCRETION, FINDING THAT COMMON QUESTIONS OF LAW AND FACT PREDOMINATED IN A MASS TORT CONTEXT, IS INSTRUCTIVE.

IN REACHING ITS CONCLUSION, THE SIXTH CIRCUIT PROVIDED GUIDANCE ON WHAT SORTS OF CASES MAY BE BEST SUITED FOR FINDING PREDOMINANCE.

THE SIXTH CIRCUIT STATED, QUOTE, "IN COMPLEX, MASS, TOXIC TORT ACCIDENTS, WHERE NO ONE SET OF OPERATIVE FACTS ESTABLISHES LIABILITY, NO SINGLE PROXIMATE CAUSE EQUALLY APPLIES TO EACH POTENTIAL CLASS MEMBER AND EACH DEFENDANT, AND INDIVIDUAL ISSUES OUTNUMBER COMMON ISSUES, THE TRIAL (SIC) COURT SHOULD PROPERLY QUESTION THE APPROPRIATENESS OF A CLASS ACTION FOR RESOLVING THE CONTROVERSY. HOWEVER, WHERE THE DEFENDANT'S LIABILITY CAN BE DETERMINED ON A CLASS-WIDE BASIS BECAUSE THE CAUSE OF THE DISASTER IS A SINGLE COURSE OF CONDUCT WHICH IS IDENTICAL FOR EACH OF THE PLAINTIFFS, A CLASS ACTION MAY BE THE BEST SUITED VEHICLE TO RESOLVE SUCH A CONTROVERSY."

THE PROBLEM FOR PLAINTIFFS IN THIS CASE IS THAT UNLIKE THE PLAINTIFFS IN THE STERLING CASE, PLAINTIFFS HAVE FAILED TO PROVIDE EVIDENCE THAT LIABILITY CAN BE DETERMINED ON A CLASS-WIDE BASIS, THAT IS, EVIDENCE THAT LIABILITY IS A COMMON, FACTUAL AND LEGAL QUESTION.

PLAINTIFFS HAVE ESSENTIALLY DEMONSTRATED THAT DEFENDANTS' OPERATIONS RESULT IN EXTENSIVE EMISSIONS, BUT WHAT REMAINS MISSING IS ANY EVIDENCE THAT THE COURSE OF THE ENTIRE CLASS OF DAMAGES COULD BE DETERMINED ON A CLASS-WIDE BASIS.

THE COURT HAS BEFORE IT A HOST OF VARIABLES WHICH BEAR ON LIABILITY AND THE PLAINTIFFS FAIL TO ADEQUATELY RECONCILE HOW THESE VARIABLES ARE AMENABLE TO COMMON PROOF OR DO NOT OTHERWISE RESULT IN

INDIVIDUALIZED QUESTIONS PREDOMINATING. FOR EXAMPLE, PLAINTIFFS FAIL TO ACCOUNT FOR THE VARIABILITY IN ALLEGED SOURCES, EXTENT AND CONCENTRATIONS OF EMISSIONS AT THE INDIVIDUAL PROPERTIES IN THE OSTENSIBLE GEOGRAPHICAL BOUNDARIES OF THE CLASS.

FACTORS THAT CREATE THIS VARIABILITY INCLUDE THE DISTINCT OPERATIONS AND EMISSIONS PROFILE OF EACH OF THE SEVEN FACILITIES; VARIATIONS IN OPERATIONS AND EMISSIONS AT EACH FACILITY OVER TIME; THE ORIENTATION OF EACH FACILITY AND THE DISTANCES FROM EACH PARTICULAR RESIDENCE.

PLAINTIFFS ALSO FAIL TO ADEQUATELY ACCOUNT FOR THE DIVERSITY OF PROPERTIES IN ANALYZING THE IMPACT ON THE PROPERTY VALUES. THERE IS AN IMMENSE VARIABILITY AMONG THE THOUSANDS OF PROPERTIES OWNED BY THE PUTATIVE CLASS MEMBERS. THE COURT IS LEFT TO MERE SPECULATION AS TO WHETHER THE CAUSAL IMPACT IS IDENTICAL BETWEEN SINGLE-FAMILY HOMES, CONDOMINIUMS, TOWNHOMES, MOBILE HOMES, SMALL RENTAL UNITS, LARGE APARTMENT COMPLEXES AND OWNER-OCCUPIED AND DUPLEX RENTALS. LIKEWISE, WHILE MANY OF THE RESIDENTIAL PROPERTIES IN PARAMOUNT ARE OWNER-OCCUPIED SINGLE-FAMILY HOMES, MANY ARE ALSO RENTED, MEANING THAT MANY ARE LIKELY TO BE INVESTMENT PROPERTIES VALUED ON RENTAL INCOME STREAMS RATHER THAN SALES COMPARISONS.

PLAINTIFFS ATTEMPT TO OVERCOME THESE ISSUES BY SUBMITTING A DECLARATION FROM THEIR EXPERT DR. BELL, A REAL ESTATE APPRAISER. DR. BELL OFFERS HIS OPINION ON

PERFORMING A MASS APPRAISAL OF ALL PROPERTIES IN THE CLASS; HOWEVER, DR. BELL'S MASS APPRAISAL OPINIONS ARE OF LIMITED IMPORT.

FIRST, DR. BELL SUGGESTS AT HIS DEPOSITION HE CANNOT PERFORM THIS MASS APPRAISAL UNLESS HE HAS THE SCIENCE TO TELL HIM WHETHER A PROPERTY IS IMPACTED BY CONTAMINATION FROM DEFENDANTS' FACILITIES AND PERHAPS THE SCALE OF CONTAMINATION. IT IS CLEAR THAT THE ASCERTAINABILITY AND CLASS DEFINITION ISSUES DISCUSSED PREVIOUSLY OVERLAP, TO A SIGNIFICANT DEGREE, WITH THE PREDOMINANCE DETERMINATION HERE.

SECOND, DR. BELL'S OPINION DOES NOT APPEAR TO REFLECT A MAGNITUDE OF PROPERTY COMPLEXITIES OR REASONABLY EXPLAIN HOW THE HOST OF PROPERTY-BY-PROPERTY SPECIFICS CAN BE AMENABLE TO HIS OSTENSIBLE MASS APPRAISAL. THE DIVERSITY OF PROPERTIES WOULD NO DOUBT AFFECT WHETHER THE VALUATIONS WERE SUSCEPTIBLE OR IMPERVIOUS TO THE IMPACT OF THE EMISSIONS.

THE PROPOSED CLASS AREA CONTAINS A COMPLEX MIX OF PROPERTIES, INCLUDING MIXED-RESIDENTIAL AND INDUSTRIAL-USE NEIGHBORHOODS AS WELL AS PURE RESIDENTIAL NEIGHBORHOODS. THE PROPERTIES ARE VARIOUSLY ADJACENT TO CERTAIN AMENITIES AND IMPAIRMENTS. THE WIDE DIVERSITY OF RESIDENTIAL PROPERTIES IS CONFIRMED BY THE DEPOSITION OF CERTAIN PUTATIVE CLASS MEMBERS AND THE INSPECTIONS OF THEIR PROPERTIES: THERE IS PROPERTIES NEAR REFINERY EXPLOSIONS, NEAR TRAINS, NEAR FLOODING, NEAR ELECTRICAL LINES.

OTHER INDIVIDUAL QUESTIONS WILL BEAR ON CAUSATION. FOR EXAMPLE, THE DIRECTION, STRENGTH AND CONSISTENCY OF THE WIND FROM EACH OF THE SEVEN FACILITIES TO EACH PROPERTY; CONTRIBUTIONS OF HEXAVALENT CHROMIUM CREATED BY OTHER NEARBY INDUSTRIAL SOURCES TO EACH PROPERTY; AND VARIABLE BACKGROUND CONCENTRATIONS OF HEXAVALENT CHROMIUM IN THE AMBIENT AIR AT EACH PROPERTY, NOT TO MENTION THE VARIOUS GEOGRAPHICAL AND TOPOGRAPHICAL DELINQUENCIES UNDER AND SURROUNDING ALL THE PROPERTIES AT ISSUE.

PLAINTIFFS' EXPERT ON REPLY, DR. RYER-POWDER, OFFERS NOTHING TO ESTABLISH THAT THESE CAUSATION ISSUES CAN BE DETERMINED ON A COMMON BASIS, MUCH LESS THAT ANY COMMON DETERMINATIONS WOULD COUNT MORE THAN THE INDIVIDUALIZED ONES. THE COURT AGAIN IS LEFT TO SPECULATE AS TO HOW, IF IT IS AT ALL POSSIBLE, COULD THE HEXAVALENT CHROMIUM THAT IS ALLEGEDLY DAMAGING ONE PROPERTY AND THE CLASS BOUNDARY MAY BE CAUSALLY LINKED TO THE UNLAWFUL EMISSIONS OF A PARTICULAR DEFENDANT, INSTEAD OF, FOR EXAMPLE, SIMPLY BEING DERIVED FROM AN AGGREGATE AMOUNT OF OTHER SOURCES.

BY CONTRAST, IN THE STERLING CASE THE SIXTH CIRCUIT DEALT WITH A SINGULAR DEFENDANT, A SOLE SOURCE OF THE TOXINS EMITTED, NOT VARIOUS INDUSTRIAL SOURCES NEARBY. THUS, IN AT LEAST ONE SENSE, THE CAUSAL DETERMINATION AS TO ONE CLASS MEMBER COULD BE EXTRAPOLATED TO ALL. AND A STRONG DEFENDANT'S TORT LIABILITY COULD BE ADJUDICATED ON A CLASS-WIDE BASIS.

IN THIS CASE THERE ARE SEVEN DEFENDANTS, ALL ALLEGEDLY EMITTING HEXAVALENT CHROMIUM TO VARYING DEGREES IN DIFFERENT LOCATIONS AND THROUGHOUT THE CLASS BOUNDARIES; HENCE, SUCH A DETERMINATION WITH RESPECT TO CAUSATION CANNOT SIMILARLY BE EXTRAPOLATED.

I ALSO NOTE THAT PLAINTIFFS PROCEED UNDER THE THEORIES OF NEGLIGENCE AND NUISANCE BASED ON THE NOXIOUS ODORS. THE COURT ASSERTS PLAINTIFFS' EXTENSIVE SUBMISSION IS IN VAIN. ANY REPORT, TEST OR OTHER PIECE OF EVIDENCE THAT WOULD ALLOW IT TO CONCLUDE THAT LIABILITY ON EITHER THEORY IS AMENABLE TO COMMON PROOF, MUCH LESS THAT THE CLAIMS MIGHT BE ADJUDICATED ON A CLASS BASIS.

ALL OF THIS IS TO SAY THAT ESSENTIALLY ONLY TWO QUESTIONS OF FACT OR LAW LISTED BY PLAINTIFFS WILL BE COMMON TO THE CLASS: ONE, WHETHER DEFENDANTS HAVE RELEASED HEXAVALENT CHROMIUM; AND, TWO, WHAT ARE THE TOXICOLOGICAL EFFECTS OF HEXAVALENT CHROMIUM?

THESE TWO ISSUES ARE FAR OUTWEIGHED BY THE INDIVIDUAL QUESTIONS BUT CONTAIN IMMENSE VARIABILITY. FOR EXAMPLE, THE ALLEGED EMISSIONS PRODUCED BY DEFENDANTS; THE LOCATIONS AND ORIENTATIONS OF THE DEFENDANTS WITH RESPECT TO ANY CLASS MEMBER PROPERTIES; THE FUNDAMENTAL DIFFERENCES AMONG THE MANY TYPES OF PROPERTY; THE GEOGRAPHIC AND TOPOGRAPHICAL VARIABLES; THE OBSTRUCTIONS AND IMPEDIMENTS TO THE EMISSIONS; THE DIRECTION, STRENGTH AND CONSISTENCY OF THE WIND FROM EACH OF THE SEVEN FACILITIES TO EACH PROPERTY;

CONTRIBUTIONS OF HEXAVALENT CHROMIUM CREATED BY OTHER NEARBY INDUSTRIAL SOURCES TO EACH PROPERTY; AND VARIABLE BACKGROUND CONCENTRATIONS OF HEXAVALENT CHROMIUM, ODORS AND OTHER POLLUTANTS IN THE AMBIENT AIR AT EACH PROPERTY.

BASED ON ALL THE FOREGOING, AND THE OVERLAPPING REASONS ALREADY DISCUSSED ON THE ISSUE OF ASCERTAINABILITY, THE COURT CONCLUDES THAT PLAINTIFFS HAVE FAILED TO MEET THEIR BURDEN OF ESTABLISHING THAT COMMON QUESTIONS OF FACT AND LAW WILL PREDOMINATE OVER INDIVIDUAL QUESTIONS.

THE NEXT FACTOR TO BE CONSIDERED ON A MOTION FOR CLASS CERTIFICATION IS TYPICALITY. TYPICALITY REFERS TO THE NATURE OF THE CLASS REPRESENTATIVE'S CLAIM OR DEFENSE, AND IS NOT SPECIFIC TO THE FACTS IN WHICH IT AROSE OR THE RELIEF SOUGHT.

THE TYPICALITY TEST IS "WHETHER OTHER MEMBERS HAVE THE SAME OR SIMILAR INJURY, WHETHER THE ACTION IS BASED ON CONDUCT WHICH IS NOT UNIQUE TO THE NAMED PLAINTIFF, AND WHETHER OTHER CLASS MEMBERS HAVE BEEN INJURED BY THE SAME COURSE OF CONDUCT."

PLAINTIFFS CONTEND IN THEIR MOTION THAT ALLISON WEINER IS TYPICAL OF THE CLASS; THAT IS, LIKE THE PUTATIVE CLASS MEMBERS, PLAINTIFF ALLISON WEINER LIVES IN THE CITY OF PARAMOUNT AND OWNS HER PROPERTY, WHICH WAS CONTAMINATED BY DEFENDANTS' CONDUCT AND SIMILARLY SUFFERED INJURY FROM THE CHEMICALS AND ODORS THAT TRAVERSE THE PROPERTY.

IN OPPOSITION, DEFENDANTS ARGUE THAT PLAINTIFF ALLISON WEINER IS NOT TYPICAL OF THE CLASS FOR TWO REASONS: ONE, THE ALLEGED EXPOSURE TO HEXAVALENT CHROMIUM AT HER PROPERTY DIVERGED FROM THE ALLEGED EXPOSURES OF ALL OTHER PROPERTIES AS THE LEVEL OF CHROMIUM DIFFERED DEPENDING ON DISTANCE, WIND DIRECTION, PROPERTY TYPE AND EMISSION AMOUNTS; AND, SECONDLY, UNLIKE EVERYONE OTHER THAN MEMBERS OF THE SUPPOSED MOBILE HOME SUBCLASS, PLAINTIFF ALLISON WEINER DOES NOT OWN REAL PROPERTY IN THE PUTATIVE CLASS AREA. THAT IS, HER MANUFACTURED HOME IS LOCATED ON A LEASED LOT IN THE PARAMOUNT MOBILE VILLAGE AND IS CLASSIFIED AS PERSONAL PROPERTY BY THE LOS ANGELES COUNTY ASSESSOR'S OFFICE.

IN REPLY, PLAINTIFFS CONCEDE THAT THEY HAVE NOT SET FORTH ANY INDIVIDUAL TO SERVE AS A CLASS REPRESENTATIVE IN THE TOWNHOME AND CONDOMINIUM SUBCLASS; HOWEVER, PLAINTIFFS ARGUE THAT PLAINTIFF ALLISON WEINER'S PROPERTY DAMAGE IS NONETHELESS TYPICAL OF THE MOBILE HOME PARK SUBCLASS BECAUSE SHE OWNS HER MOBILE HOME, WHICH IS LOCATED WITHIN THE CITY OF PARAMOUNT, AND IT HAS BEEN NEGATIVELY AFFECTED BY DEFENDANTS' TORTIOUS CONDUCT.

AND WHILE PLAINTIFFS DO NOT NAME OR SET FORTH ARGUMENT REGARDING A CLASS REPRESENTATIVE FOR A SINGLE-FAMILY HOME SUBCLASS, PLAINTIFFS NOW SEEK LEAVE TO ASSIGN PLAINTIFF MOSES HUERTA AS SUCH A CLASS REPRESENTATIVE. ACCORDING TO PLAINTIFFS, THEY HAVE ALREADY SUBMITTED A DECLARATION BY PLAINTIFF HUERTA

WITHIN THE MOVING PAPERS WHICH ADEQUATELY ESTABLISHES HIS TYPICALITY AS TO THE CLASS.

WITH RESPECT TO ALLISON WEINER, THE CLAIM OF TYPICALITY WOULD BE PROBLEMATIC FOR A NUMBER OF REASONS.

FIRST, AS ESSENTIALLY CONCEDED BY PLAINTIFFS, SHE WOULD NOT BE TYPICAL OF THE SUBCLASS INVOLVING CONDOMINIUMS, TOWNHOMES OR SINGLE-FAMILY RESIDENCES, GIVEN THAT SHE DOES NOT OWN ANY OF THOSE TYPES OF PROPERTIES IN THE CLASS BOUNDARIES; THUS, THE ISSUE IS NARROWED TO WHETHER HER CLAIMS AND INTERESTS WOULD BE TYPICAL TO THE MOBILE HOME PARK SUBCLASS. BUT EVEN THAT LIMITED FINDING WOULD BE PROBLEMATICAL.

FIRST, AS ESSENTIALLY CONCEDED BY PLAINTIFFS, AND OTHERWISE CLEARLY ESTABLISHED BY PLAINTIFFS' EVIDENCE, PLAINTIFF ALLISON WEINER DOES NOT ACTUALLY OWN REAL PROPERTY IN CONNECTION WITH HER MOBILE HOME. ALTHOUGH NOT ENTIRELY UNAMBIGUOUS, THE OPERATIVE COMPLAINT APPEARS TO BE BASED ON INJURY TO REAL PROPERTY AND REAL-PROPERTY OWNERS, NOT OWNERS WHO SUSTAIN INJURY THROUGH PERSONAL PROPERTY DAMAGE. TO ANY DEGREE THIS WAS LEFT AMBIGUOUS THROUGH THE THIRD AMENDED COMPLAINT, PLAINTIFFS' USE OF A REAL PROPERTY EXPERT TO SUPPORT ITS CERTIFICATION MOTION OFFERED CLARITY ON THIS POINT.

BECAUSE PLAINTIFFS' CLAIM DID NOT REST ON THE DIMINUTION OF VALUE TO PERSONAL PROPERTY, PLAINTIFF ALLISON WEINER'S CLAIM TO TYPICALITY IS CALLED INTO QUESTION.

SECONDLY, THIS ISSUE IS EVEN MORE PRONOUNCED GIVEN THAT SOME OF THE PUTATIVE CLASS MEMBERS OWN MOBILE PARKS BUT NOT THE MOBILE HOMES THEMSELVES. THESE OWNERS WOULD BE MORE AKIN TO OWNERS OF OTHER PROPERTIES WITHIN THE CLASS BOUNDARIES; FOR EXAMPLE, OWNERS WHO OWN RENTAL BUILDINGS OCCUPIED BY RENTERS.

PLAINTIFF ALLISON WEINER'S CLAIMED INJURIES WOULD NOT BE TYPICAL OF THOSE, NOR, FOR AT LEAST ONE PUTATIVE CLASS MEMBER, AS IDENTIFIED BY DEFENDANTS, WHO OWNS BOTH THE LAND BENEATH THE MOBILE HOME AND THE HOME ITSELF, ALSO UNLIKE PLAINTIFF WEINER WHICH, AGAIN, RUNS INTO A TYPICALITY PROBLEM.

LASTLY, SIMILAR TO THE OVERLAPPING PROBLEMS EXPRESSED IN THE ASCERTAINABILITY ISSUE AND THE PREDOMINANCE OF COMMON ISSUES OR INDIVIDUAL ISSUES, THE MATTERS DISCUSSED REGARDING THE VARIABLES PLAY A ROLE IN THE ANALYSIS OF TYPICALITY ALSO; THAT IS, THE LOCATION, CHARACTERISTICS AND CONDITION OF THE HOMES IN THE PUTATIVE CLASS AREA DIFFER MARKEDLY.

PLAINTIFFS HAVE SET FORTH NO EVIDENCE THAT PLAINTIFF ALLISON WEINER'S CLAIMS OF DEVALUATION OR INJURY TO HER PERSONAL PROPERTY WOULD BE TYPICAL OF OTHERS BASED ON THOSE DIFFERING CONDITIONS.

THE COURT ALSO NOTES THAT PLAINTIFF ALLISON WEINER'S SUPPORTING DECLARATION DOES NOT SO MUCH AS EVEN MENTION THAT SHE EXPERIENCED A NOXIOUS ODOR AT HER MOBILE HOME. THERE'S NO EVIDENCE BEFORE THE COURT THAT HER CLAIMS AND INJURIES WOULD BE TYPICAL OF THOSE

PUTATIVE CLASS MEMBERS EXPERIENCING ALLEGED NOXIOUS ODORS; THEREFORE, IN LIGHT OF THE FOREGOING, PLAINTIFFS DO NOT MEET THE BURDEN OF ESTABLISHING TYPICALITY WITH RESPECT TO PLAINTIFF ALLISON WEINER.

TURNING TO PLAINTIFFS' ARGUMENT, ON REPLY, THAT TYPICALITY CAN BE ESTABLISHED WITH RESPECT TO PLAINTIFF HUERTA AND THE SINGLE-FAMILY RESIDENTIAL SUBCLASS, LIKE THE ANALYSIS AS TO PLAINTIFF WEINER, ANY FINDING OF TYPICALITY WOULD BE PROBLEMATIC WITH REGARD TO MR. HUERTA, ALSO FOR MULTIPLE REASONS.

FIRST, THERE ARE SOME QUESTIONS AS TO THE FOUNDATION FOR THE STATEMENTS MADE IN HIS DECLARATION.

WHILE IT MAY BE INFERRED FROM PLAINTIFF HUERTA'S DECLARATION THAT HE OWNS THE PROPERTY LOCATED AT 16629 VERMONT AVENUE DURING THE RELEVANT TIME PERIOD, THE DECLARATION DOES NOT ACTUALLY SAY ANYTHING ABOUT HIS OWNERSHIP.

HE DID SAY HE BOUGHT THE PROPERTY AT SOME POINT, I GUESS, FROM HIS PARENTS. IT DOESN'T SAY THAT HE LIVES THERE OR PRESENTLY OWNS IT, ALTHOUGH HE ATTACHES WHAT HE CALLS A "PROPERTY OWNERSHIP DOCUMENT" WHICH IS KIND OF STRANGE BECAUSE THE PROPERTY OWNERSHIP DOCUMENT DOES NOT CONSIST OF A DEED, A TRANSFER OF TITLE. WHAT IS PRESENTED IS A 2017 TAX FORM, A 1098 FROM CITI MORTGAGE, INDICATING, I GUESS, THE DEDUCTIBILITY OF MORTGAGE INTEREST.

I GUESS WE'RE SUPPOSED TO ASSUME THAT BECAUSE HE HAS A LOAN THAT IS SECURED BY THE PROPERTY

AND HE RECEIVED A FORM FROM THE LENDER SETTING FORTH WHAT PORTION OF THE PAYMENTS WERE INTEREST FOR 2017 THAT WE SHOULD ASSUME FROM THAT THAT HE IS AN OWNER OF THE SUBJECT PROPERTY.

PLAINTIFF ALSO OFFERS NO FOUNDATION OR INFORMATION REGARDING THE DOCUMENT, HIS PERSONAL KNOWLEDGE OF THE DOCUMENT OR WHO PREPARED IT. AND ALTHOUGH IT'S INTERESTING THAT HE HAS A MORTGAGE ON A PROPERTY, THERE'S NO EVIDENCE DIRECTLY THAT HE ACTUALLY OWNS THE PROPERTY. BUT ASSUMING THAT HE DOES, THE TYPICALITY WITH RESPECT TO PLAINTIFF HUERTA'S OWNERSHIP SUFFERS FROM MANY OF THE SAME PROBLEMS DISCUSSED WITH RESPECT TO PLAINTIFF ALLISON WEINER.

FOR EXAMPLE, LOCATION, CHARACTERISTICS AND CONDITION OF THE HOMES IN THE PUTATIVE CLASS AREA DIFFER MARKEDLY. PLAINTIFF HUERTA'S DECLARATION OFFERS SOME CONCLUSORY STATEMENTS BUT OFFERS NO EVIDENCE THAT HIS CLAIMS OF DEVALUATION OR INJURY TO HIS OSTENSIBLE SINGLE-FAMILY HOME WOULD BE TYPICAL OF OTHERS BASED UPON DIFFERING CONDITIONS. AND LIKE ALLISON WEINER'S DECLARATION, PLAINTIFF HUERTA'S DECLARATION DOES NOT MENTION ANY NOXIOUS ODORS. THERE IS NO EVIDENCE BEFORE THE COURT THAT HIS CLAIMS OF INJURY WOULD BE TYPICAL OF THOSE PUTATIVE MEMBERS EXPERIENCING SUCH ORDERS.

IN LIGHT OF ALL THE FOREGOING, THE COURT FINDS THAT PLAINTIFFS HAVE NOT MET THEIR BURDEN TO ESTABLISH TYPICALITY WITH RESPECT TO PLAINTIFF HUERTA OR WEINER.

THE NEXT FACTOR TO BE CONSIDERED BY THE COURT WITH REGARD TO CERTIFICATION IS ADEQUACY. AND THAT IS THE ADEQUACY OF PLAINTIFF AND COUNSEL TO REPRESENT THE CLASS.

THE NAMED PLAINTIFF MUST BE ADEQUATE TO REPRESENT ALL THE INDIVIDUAL MEMBERS OF THE CLASS, AND IT DEPENDS ON WHETHER THE PLAINTIFFS' ATTORNEYS IS QUALIFIED TO CONDUCT THE PROPOSED LITIGATION AND PLAINTIFFS' INTERESTS ARE NOT ANTAGONISTIC TO THE INTERESTS OF THE CLASS.

THE PRIMARY CRITERIA FOR DETERMINING WHETHER A CLASS REPRESENTATIVE WILL ADEQUATELY REPRESENT THE CLASS IS WHETHER THE REPRESENTATIVE, THROUGH QUALIFIED COUNSEL, WILL "VIGOROUSLY AND TENACIOUSLY," PROTECT THE INTERESTS OF THE CLASS.

IN THE PRESENT CASE, PLAINTIFFS' COUNSEL HAS SUBMITTED A DECLARATION ESTABLISHING COUNSEL IS EXPERIENCED AND WELL-QUALIFIED TO LEAD THIS PROPOSED CLASS ACTION PROCEEDING. AND THERE'S NO CONTRARY EVIDENCE TO THAT PROPOSITION.

THE PLAINTIFFS THEMSELVES SEEM TO HAVE A CLEAR UNDERSTANDING OF THE FACTS OF THE CASE AND ARE WILLING TO PARTICIPATE IN IT. AND PLAINTIFFS HAVE REPRESENTED THAT THERE IS NO CONFLICT AND THEY APPEAR TO BE WILLING TO PURSUE THE ACTION ON BEHALF OF THE PROPOSED CLASS.

WERE THE ANALYSIS TO END THERE, THE ADEQUACY MIGHT BE ESTABLISHED; HOWEVER, AS THE

UNITED STATES SUPREME COURT HAS NOTED, "THE ADEQUACY-OF-REPRESENTATION REQUIREMENT 'TENDS TO MERGE' WITH THE COMMONALITY AND TYPICALITY REQUIREMENT (SIC) WHICH "SERVE AS GUIDEPOSTS FOR DETERMINING WHETHER...MAINTENANCE OF THE CLASS ACTION IS ECONOMICAL AND WHETHER THE NAMED PLAINTIFF'S CLAIMS AND THE CLASS CLAIMS ARE SO INTERRELATED THAT THE INTERESTS OF THE CLASS MEMBERS WILL BE FAIRLY AND ADEQUATELY PROTECTED IN THEIR ABSENCE," CITING AMCHEM PRODUCTS VERSUS WINDSOR, 1997, 521 U.S. 591.

IN THIS CASE, PLAINTIFFS HAVE FAILED TO ESTABLISH THAT THE INTERESTS OF THOSE WITHIN THE SINGLE CLASS OF REAL-PROPERTY OWNERS ARE ALIGNED WITH THOSE OF PLAINTIFF WEINER, AN OSTENSIBLE NON-REAL-PROPERTY OWNER, OWNER OF A MOBILE HOME. AND PLAINTIFFS OFFER NOTHING TO RECONCILE DISPARITY AMONG THE TYPES OF PROPERTY OWNERS AT ISSUE, THEIR INTERESTS AND THE INTERESTS OF THE PROPOSED CLASS REPRESENTATIVES. THE PLAINTIFFS HAVE OFFERED NO ANALYSIS OR ARGUMENT WITH RESPECT TO PLAINTIFF HUERTA'S ADEQUACY, MUCH LESS AS TO WHETHER HIS INTERESTS ARE CO-EXTENSIVE WITH THE CLASS.

MOREOVER, TO THE EXTENT THE PLAINTIFFS SEEK EITHER OF THESE TWO INDIVIDUALS AS POSSIBLE REPRESENTATIVES TO REPRESENT THE NORMAN CLASS, ADEQUACY HAS ALSO NOT BEEN MET FOR THAT CLASS. NEITHER DECLARATION FROM NORMAN (SIC) OR HUERTA OFFER ANY EVIDENCE THAT THEY'RE QUALIFIED TO CONDUCT THE PROPOSED LITIGATION AND THEIR PROPOSED INTERESTS ARE NOT

ANTAGONISTIC TO THE INTERESTS OF THE NORMAN CLASS.

THE DECLARATIONS DO NOT PERSUADE THE COURT THAT THEY WILL VIGOROUSLY AND TENACIOUSLY PROTECT THE INTERESTS OF THE CLASS WITH RESPECT TO THE NORMAN CLASS CLAIMS. AS ALREADY MENTIONED, THE DECLARATIONS DO NOT MENTION THAT THESE PLAINTIFFS EXPERIENCED ANY OF THE INJURIES ASSOCIATED WITH NOXIOUS ODORS, MUCH LESS STATING THAT THEY UNDERSTAND AND ARE WILLING TO PROSECUTE THE NOXIOUS ODOR CLAIMS.

BASED UPON ALL OF THE FOREGOING, THE COURT CANNOT FIND THAT PLAINTIFF ALLISON WEINER OR PLAINTIFF HUERTA WOULD ADEQUATELY AND FAIRLY REPRESENT THE ABSENT CLASS MEMBERS.

"TRIAL COURTS ARE REQUIRED TO CAREFULLY WEIGH RESPECTIVE BENEFITS AND BURDENS AND TO ALLOW MAINTENANCE OF THE CLASS ACTION ONLY WHERE SUBSTANTIAL BENEFITS ACCRUE BOTH TO THE LITIGANTS AND THE COURTS," CITING LINDER VERSUS THRIFTY OIL, 2000, 23 CAL. 4TH 429.

COURTS MUST PAY CAREFUL ATTENTION TO MANAGEABILITY CONCERNS WHEN DECIDING WHETHER TO CERTIFY A CLASS ACTION. IN A COURT'S CONSIDERATION OF WHETHER A CLASS ACTION IS SUPERIOR FOR RESOLVING A CONTROVERSY, THE MANAGEABILITY OF INDIVIDUAL ISSUES IS JUST AS IMPORTANT AS THE EXISTENCE OF COMMON QUESTIONS UNITING THE PROPOSED CLASS.

TRIAL COURTS EVALUATE WHETHER A CLASS ACTION IS A SUPERIOR MEANS FOR RESOLVING LITIGATION BY CONSIDERING VARYING AND MANY FACTORS, INCLUDING, BUT NOT

LIMITED TO, WHETHER THE ALLEGED CLAIMS, BEING SMALL, WOULD NOT BE PURSUED EXCEPT BY WAY OF A CLASS ACTION; WHETHER MULTIPLE LAWSUITS ARE LIKELY IF THE CLASS ACTION IS NOT CERTIFIED; WHETHER INDIVIDUAL RIGHTS CAN BE ADEQUATELY PROTECTED IF THE ACTION PROCEEDS AS A CLASS ACTION; AND WHETHER CLASS TREATMENT IS MORE EFFICIENT AND ECONOMICAL THAN ADJUDICATING THE POTENTIAL NUMBER OF INDIVIDUAL CASES.

IN THIS CASE, IN THIS MOTION FOR CLASS CERTIFICATION, NOTHING REMOTELY SUGGESTS THAT THE CLASS ACTION MECHANISM IS SUBSTANTIALLY MORE EFFICIENT THAN JOINDER OF ALL THE INDIVIDUAL CLAIMANT PARTIES. AS MENTIONED, INDIVIDUALIZED QUESTIONS OF FACT OR LAW EXCEED THOSE WHICH ARE COMMON TO THE CLASS.

A SEPARATE INQUIRY, NECESSARY FOR EACH PROPERTY, EACH PLAINTIFF, AND EACH DEFENDANT, WOULD UNDO WHATEVER EFFICIENCIES SUCH CLASS PROCEEDING WOULD HAVE BEEN INTENDED TO PROMOTE. MOREOVER, MASSIVE PROBLEMS EXIST AS TO THE ASCERTAINABILITY OF THE CLASS. YET, TO THE EXTENT THAT THE CLASS COULD BE ASCERTAINED, ALL OF THE CLASS MEMBERS ARE CONVENIENTLY LOCATED IN THE GREATER PARAMOUNT AREA, BASED UPON THE MAP THAT WAS PROVIDED BY THE ATTORNEYS. ADMITTEDLY, MULTIPLE LAWSUITS WOULD LIKELY PRECEDE; HOWEVER, PLAINTIFFS' OWN EVIDENCE ESTABLISHES THAT THE PROPERTY DEVALUATIONS ARE SIGNIFICANT, MAKING IT LESS LIKELY THAT THERE WOULD BE ECONOMIC BARRIERS TO BRINGING LITIGATION ON AN INDIVIDUAL BASIS.

IN OTHER WORDS, THE POTENTIAL INDIVIDUAL RECOVERIES OF THE PUTATIVE CLASS MEMBERS WOULD NOT BE SO SMALL OR INSIGNIFICANT SO AS TO PRECLUDE INDIVIDUAL LITIGATION. THIS WOULD ALSO STAND TO FURTHER PROTECT INDIVIDUAL RIGHTS, ESPECIALLY IN LIGHT OF THE INADEQUACY OF THE CLASS REPRESENTATIVES AND PLAINTIFFS' GENERAL INABILITY TO FIND REPRESENTATIVES. AS IT STANDS, ALMOST NO FACTOR WEIGHS IN FAVOR OF THIS CASE BEING BROUGHT AS A CLASS ACTION; AND, THEREFORE, THE COURT IS GOING TO DENY THE MOTION FOR CLASS CERTIFICATION.

AS A SIDE NOTE, THE COURT IS ALSO GOING TO DENY DEFENDANTS' MOTION TO EXCLUDE THE DECLARATION OF DR. RANDALL BELL. ALTHOUGH THERE ARE MANY PARTS OF THE DECLARATION THAT ARE QUESTIONABLE AS FAR AS ANSWERING THE QUESTIONS WHICH MUST BE CONSIDERED ON A MOTION FOR CLASS CERTIFICATION; NEVERTHELESS, THE OBJECTIONS REALLY GO TO THE WEIGHT OF THE DECLARATION, NOT TO ITS ADMISSIBILITY. SO THE MOTION TO EXCLUDE THE DECLARATION IS DENIED.

AND I'LL ORDER DEFENDANTS TO PREPARE AN APPROPRIATE ORDER AND GIVE NOTICE TO PLAINTIFF AND POST IT ON THE WEBSITE.

I THANK COUNSEL FOR THE EXTENSIVE AND EXCELLENT BRIEFING ON THE ISSUE.

THERE'S ONE OTHER MATTER THAT I THINK WE SHOULD ADDRESS, AND THAT IS THERE WAS A STATUS CONFERENCE SET FOR THE CALZADA CASE, WHICH HAS BEEN RELATED TO THE WEINER CASE AND THE OTHER CASES.

I DO SEE, BASED UPON THE JOINT STATUS CONFERENCE REPORT, THAT A STIPULATION HAS BEEN ENTERED INTO AND THE COURT HAS SIGNED THE ORDER APPROVING THE STIPULATION TO COORDINATE DISCOVERY SO THAT THE ACTIONS PROCEED ON A SIMILAR SCHEDULE, AND THAT DEFENDANTS HAVE PROVIDED THE CALZADA PLAINTIFFS WITH THE SAME SHORT-FORM QUESTIONNAIRES AND DISCOVERY IS PROCEEDING.

ANYTHING ANYONE WOULD SPECIFICALLY LIKE TO ADDRESS ON THAT CASE?

ANY OTHER ISSUES ANYONE WISHES TO ADDRESS TODAY?

ALL RIGHT. WE'LL SET ANOTHER STATUS CONFERENCE --

THE CLERK: YOUR HONOR, I APOLOGIZE TO INTERRUPT.

ON THE WEINER MATTER, WE HAD THE OSC RE DISMISSAL OF SOME PLAINTIFFS. I BELIEVE IT WAS THE SOSA PLAINTIFFS.

THE COURT: I'M SORRY?

THE CLERK: I THOUGHT WE HAD AN ORDER TO SHOW CAUSE ON THE WEINER CASE REGARDING THE DISMISSAL OF INDIVIDUAL PLAINTIFFS THAT HAVE NOT FILLED OUT THE QUESTIONNAIRE.

THE COURT: ALL RIGHT. ANY COUNSEL WISH TO UPDATE THE COURT?

THE CLERK REMINDS ME --

MR. WEBB: YOUR HONOR --

THE COURT: -- THERE THAT WAS AN OSC WITH REGARDS TO PLAINTIFFS WHO HAVE NOT COMPLETED, I TAKE IT, THE

PLAINTIFF FACT SHEETS.

ANY INPUT ON THAT?

MR. WEBB: YOUR HONOR --

MR. KELLY: YES, YOUR HONOR. THIS IS MICHAEL KELLY FOR THE PLAINTIFFS.

WE HAVE NOT RECEIVED THE FACT SHEETS TO DATE FROM JULIAN SOSA, JR., OR JULIAN SOSA, III.

MR. JOSEPH FINNERTY: YES, YOUR HONOR. THIS IS JOSEPH FINNERTY.

I BELIEVE THE ORDER TO SHOW CAUSE WAS FOR JULIAN SOSA, JR., AND JULIAN SOSA, III

THE COURT: YES. NOW I REMEMBER. YES.

SO YOU'VE NOT RECEIVED THE FACT SHEETS FROM THEM; THEY'RE NO LONGER INTERESTED IN PURSUING THE MATTER.

AND THEY'VE BEEN GIVEN NOTICE WITH REGARD TO THE FACT SHEETS, HAVE THEY NOT?

MR. KELLY: THEY HAVE, YOUR HONOR.

MR. JOSEPH FINNERTY: THEY HAVE BEEN GIVEN NOTICE OF THE FACT SHEETS, YOUR HONOR, AND THEY HAVE NOT SUBMITTED THEM, YES.

THE COURT: ALL RIGHT. AND BASED UPON THE FAILURE TO PROVIDE THE FACT SHEETS, THEN WE SET AN OSC RE DISMISSAL.

THE PLAINTIFFS HAVE HAD NOTICE OF THE OSC RE DISMISSAL, THAT IF THEY DON'T PROVIDE THE FACT SHEETS, THE CLAIMS OF THOSE PLAINTIFFS WILL BE DISMISSED; SO ANYTHING TO SAY IN RESPONSE TO THE COURT'S

PROPOSED ACTION OF DISMISSING THOSE CLAIMS?

MR. KELLY: NO, YOUR HONOR.

THE COURT: ALL RIGHT. THEN THE COURT WILL DISMISS THOSE PLAINTIFFS' CLAIMS.

ANYTHING ELSE ANYONE WISHES TO ADDRESS TODAY?

ALL RIGHT. WE'LL SET ANOTHER STATUS CONFERENCE ABOUT 60 DAYS OUT.

WE'LL SET THE NEXT STATUS CONFERENCE FOR MARCH 14TH AT 9:00 A.M. AND I'LL ORDER THE PARTIES TO MEET AND CONFER AND SUBMIT A JOINT REPORT NO LATER THAN MARCH 7TH AS TO THE STATUS OF THE DISCOVERY AND A PROPOSED DATE FOR SETTING THE CASE FOR TRIAL.

AND I'D ALSO ORDER THE PARTIES TO MEET AND CONFER WITH REGARD TO THE PREPARATION OF A PROPOSED TRIAL MANAGEMENT ORDER. AND THAT IS GIVEN NUMEROUS PARTIES PARTICIPATING, THAT THE PARTIES SHOULD DISCUSS A PROCESS OF HOW THEY ENVISION THE CASE BEING TRIED.

THE CLERK: YOUR HONOR, I BELIEVE THIS MATTER IS ALREADY SET FOR TRIAL FEBRUARY 25TH.

NO?

I APOLOGIZE.

THE COURT: I THINK IT WAS THE INTENTION TO VACATE THAT DATE.

DIDN'T WE DISCUSS THAT LAST TIME?

MR. KELLY: YES, YOUR HONOR.

MR. ROMEY: YES, YOUR HONOR.

I THINK THAT'S THE ANAPLEX SEPARATE MATTER

THAT WAS GOING TO GO TO TRIAL.

THE COURT: RIGHT. OKAY.

THE COURT IS GOING TO VACATE THAT DATE IN THE WEINER CASE.

AND SO THAT THE PARTIES SHOULD ADDRESS THE TRIAL MANAGEABILITY ISSUES IN THEIR REPORT AND WE'LL DISCUSS THAT AT THE NEXT CONFERENCE ON MARCH 14TH.

I'D ASK DEFENDANT TO GIVE NOTICE AND POST IT ON THE WEBSITE.

AND THANK YOU, COUNSEL.

MR. FRAZIER: YOUR HONOR, IF I MAY?

MARK FRAZIER FOR WEBER METALS.

THE COURT: YES.

MR. FRAZIER: THERE WAS A NEW LAWSUIT FILED, I BELIEVE IN OCTOBER, LEAD PLAINTIFF NAMED CRAIG, BY PLAINTIFFS' COUNSEL.

THE COURT: CRAIG, C-R-A-I-G?

MR. FRAZIER: CORRECT, C-R-A-I-G.

THE COURT: DO YOU HAVE THE CASE NUMBER?

MR. FRAZIER: I DO NOT IN FRONT OF ME.

IT WAS FILED WITH THE NOTICE OF RELATED CASES. TO MY KNOWLEDGE, THERE HAVE BEEN NO RESPONSES YET IN THAT CASE BUT IT APPEARS TO BE PRETTY MUCH THE SAME AS THE WEINER IN TERMS OF ITS ALLEGATIONS.

THE COURT: DO YOU KNOW WHICH DEPARTMENT TO WHICH IT WAS ASSIGNED?

MR. FRAZIER: PLAINTIFFS' COUNSEL MAY KNOW.

MR. KELLY: OFF THE TOP OF MY HEAD, I DON'T. I

THINK IT'S BOUNCED AROUND A COUPLE OF TIMES. BUT WE DID FILE A NOTICE OF RELATED CASE TO TRY TO GET IT HERE.

THE COURT: DO YOU HAVE A COPY OF THE NOTICE OF RELATED CASE HERE?

MR. KELLY: NOT WITH ME, BUT WE CAN CERTAINLY PROVIDE THAT.

THE COURT: DID YOU FILE THAT IN THIS DEPARTMENT?

MR. KELLY: WE DID NOT, NO. WE FILED IT AT STANLEY MOSK WITH A NOTICE OF RELATED CASE TO BE SENT TO THIS DEPARTMENT. BUT WE CAN CERTAINLY PROVIDE THAT FOR THE COURT ON CASEANYWHERE OR HOWEVER YOU'D LIKE.

THE COURT: OKAY. ANY OBJECTION TO RELATING THAT CASE TO THE WEINER CASE AND THE OTHER CASES BEFORE THIS COURT?

MR. FRAZIER: NO OBJECTION.

MR. ROMEY: NO OBJECTION.

THE COURT: ALL RIGHT.

AND, COUNSEL, YOU REPRESENT THE PLAINTIFF IN THAT CASE?

MR. KELLY: THAT'S CORRECT.

THE COURT: WITHOUT OBJECTION, THE COURT WILL ORDER THE CRAIG CASE RELATED TO THE OTHER CASES HERE AND ORDER TRANSFER TO THIS DEPARTMENT.

AND I'D ASK COUNSEL, AFTER THE HEARING, TO SEE IF YOU CAN LOCATE THE CASE NUMBER TO ADVISE THE CLERK OF THE COURT.

ALL RIGHT. THANK YOU, COUNSEL, AND HAVE A GOOD DAY, A GOOD WEEK.

MR. ROMEY: THANK YOU, YOUR HONOR.

MR. WEBB: YOUR HONOR, ON THE CALZADA CASE?

THE COURT: YES.

YES, COUNSEL?

MR. WEBB: YOUR HONOR, ON THE CALZADA CASE, I HIT THE HANG-UP BUTTON INSTEAD OF THE MUTE BUTTON, I APOLOGIZE.

THIS IS ATTORNEY LENDEN WEBB FOR THE PLAINTIFFS.

THE COURT: YES.

DID YOU WANT TO SAY SOMETHING?

MR. WEBB: WHEN YOU -- AFTER YOUR --

WHEN YOU CALLED THE CALZADA CASE, I HIT THE MUTE -- THE MUTE INSTEAD OF THE HANG-UP OR VICE VERSA.

THE COURT: ALL RIGHT. THANK YOU FOR YOUR APPEARANCE.

/

/

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 6		HON. ELIHU M. BERLE, JUDGE
ALLISON WEINER, ET AL.,	)	NO. BC652102
	)	(CONSOLIDATED WITH
PLAINTIFFS,	)	NO. BC677134)
	)	
VS.	)	RELATED CASES: BC644520,
	)	BC650094, BC651484
AEROCRAFT HEAT TREATING COMPANY, INC., ET AL.,	)	
	)	
DEFENDANTS.	)	REPORTER'S
	)	CERTIFICATE

I, LAURIE HELD-BIEHL, STIPULATED REPORTER PRO TEMPORE OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF LOS ANGELES, DO HEREBY CERTIFY THAT I DID CORRECTLY REPORT THE PROCEEDINGS CONTAINED HEREIN AND THAT THE FOREGOING PAGES 1 THROUGH 46, INCLUSIVE, COMPRISE A FULL, TRUE, AND CORRECT TRANSCRIPT OF THE PROCEEDINGS AND TESTIMONY TAKEN IN THE MATTER OF THE ABOVE-ENTITLED CAUSE ON MONDAY, JANUARY 14, 2019.

DATED THIS 21ST DAY OF JANUARY, 2019.

LAURIE HELD-BIEHL, CSR NO. 6781

EXHIBIT B

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Spring Street Courthouse, Department 6

BC652102
ALLISON WEINER ET AL VS AEROCRAFT HEAT TREATING COMPANY INC

January 14, 2019
10:00 AM

Judge: Honorable Elihu M. Berle

Judicial Assistant: M. Fregoso
Courtroom Assistant: M. Molinar

CSR: Laurie Held-Biehl CSR# 6781, Reporter Pro Tem
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): LEXINGTON LAW GROUP (Telephonic) By Lucas C. Williams; Mike M. Arias, Esq. By Arnold C Wang; Thomas V. Girardi, Esq. By Michel P. Kelly

For Defendant(s): Rutan & Tucker, Law Offices of By Lucas K. Hori; Kutak Rock LLP By Jad T. Davis; Clark Hill LLP By Christopher G. Foster -- See additional appearances below.

Other Appearance Notes: Defendant, Rutan & tucker, LLP, By Mark B. FrazierDefendant, Kutak Rock LLP, By John Mark JenningsPlaintiff, Girardi | Keese, By Robert W. FinnertyPlaintiff, Girardi | Keese, By Joseph R. Finnerty

NATURE OF PROCEEDINGS: Hearing on Motion for Class Certification; Order to Show Cause Re: Dismissal of certain Plaintiffs; Hearing on Motion - Other To Exclude Declaration of Dr. Randall Bell

Matters are called for hearing.

Pursuant to Government Code sections 68086, 70044, California Rules of Court, rule 2.956, and the stipulation of appearing parties, Laure Held Biehl, certified shorthand reporter is appointed as an official Court reporter pro tempore in these proceedings, and is ordered to comply with the terms of the Court Reporter Agreement. The Order is signed and filed this date.

Motion for Class Certification and Motion to exclude are heard, argued and:

The Motion to Exclude Declaration of Dr. Randall Bell filed by PRESS FORGE COMPANY , CARLTON FORGE WORKS, INC. , Aerocraft Heat Treating Company, Inc on 11/19/2018 is Denied.

The Motion for Class Certification is denied

The Order to Show Cause re: dismissal is heard, and no party showing good cause: the claims of plaintiffs Julian Sosa III and Julian Sosa Jr. are dismissed this date without prejudice.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Spring Street Courthouse, Department 6

BC652102
ALLISON WEINER ET AL VS AEROCRAFT HEAT TREATING COMPANY INC

January 14, 2019
10:00 AM

Judge: Honorable Elihu M. Berle
Judicial Assistant: M. Fregoso
Courtroom Assistant: M. Molinar

CSR: Laurie Held-Biehl CSR# 6781, Reporter Pro Tem
ERM: None
Deputy Sheriff: None

Status Conference is scheduled for 03/14/19 at 09:00 AM in Department 6 at Spring Street Courthouse.

The parties are directed to meet and confer and file a Joint Report re: status of discovery, proposed date for trial, and trial management order by March 7, 2019.

On the Court's own motion, the Final Status Conference scheduled for 01/28/2019, and Non-Jury Trial scheduled for 02/25/2019 are advanced to this date and vacated .

The court finds that the following cases, BC652102 and 18STCV03833, are related within the meaning of CRC 3.300(a). BC652102 is the lead case. For good cause shown, said cases are assigned to Judge Elihu M. Berle in Department 6 at Spring Street Courthouse.

All hearings in cases other than the lead case are advanced and taken off calendar. Counsel for the defendant is ordered to serve notice of this order

Counsel for the defendant is to give notice and post on the website.

Additional appearances for Defendant(s):
CASTELLON & FUNDERBURK, LLP By Alastair F. Hamblin
Michael George Romey

PROOF OF SERVICE

I am employed in the County of San Diego, State of California. I am over the age of 18 years. My business address is Latham & Watkins LLP, 12670 High Bluff Drive, San Diego, California 92130. My email address is: stacy.silver@lw.com.

On **January 29, 2019**, I served the following document described as:

[PROPOSED ORDER] RE:

(1) PLAINTIFFS' MOTION FOR CLASS CERTIFICATION;

(2) PLAINTIFFS' REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF MOTION FOR CLASS CERTIFICATION;

(3) CERTAIN DEFENDANTS' MOTION TO EXCLUDE DECLARATION OF DR. RANDALL BELL;

(4) DEFENDANT MATTCO FORGE, INC.'S EVIDENTIARY OBJECTIONS TO PLAINTIFFS' REQUEST FOR JUDICIAL NOTICE

(5) CERTAIN DEFENDANTS' REQUEST FOR JUDICIAL NOTICE; and

(6) PLAINTIFFS' REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF PLAINTIFFS' REPLY MEMORANDUM FILED IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

by serving a true copy of the above-described document in the following manner:

BY ELECTRONIC MAIL (VIA CASE ANYWHERE)

By electronic mail transmission from stacy.silver@lw.com on January 29, 2019, by transmitting a PDF format copy of such document(s) at the email address listed by their addresses. The document(s) was/were transmitted by electronic transmission and such transmission was reported as complete and without error.

SEE ATTACHED SERVICE LIST

I declare that I am employed in the office of a member of the Bar of, or permitted to practice before, this Court at whose direction the service was made and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on **January 29, 2019**, at San Diego, California.

Stacy J. Silver

Electronic Service List

Case: **Weiner, et al. v. Aerocraft Heat Treating Company, et al.**

Case Info: **BC652102 and Related Cases (BC644520, BC650094, BC651485, TC028875, BC677134), Los Angeles Superior Court**

Arias Sanguinetti Wang & Torrijos LLP
Mike Arias, Esq. (mike@asstlawyers.com)
Arnold Wang, Esq. (arnold@asstlawyers.com)
6701 Center Drive West, Suite 1400
Los Angeles, CA 90045
Phone: (310) 844-9696
Fax: (310) 861-0168

Representing: Eglossiree Norman, an individual, on behalf of herself, the general public and those similarly situated

Best Best & Krieger LLP
Gene Tanaka, Esq. (gene.tanaka@bbklaw.com)
3390 University Ave., 5th Floor
Riverside, CA 92502
Phone: (951) 686-1450
Fax: (951) 686-3083

Representing: People of the State of California ex rel. County of Los Angeles

Best Best & Krieger LLP
Ryan Guiboa, Esq. (ryan.guiboa@bbklaw.com)
John Holloway, Esq. (john.holloway@bbklaw.com)
Wendy Wang, Esq. (wendy.wang@bbklaw.com)
300 S. Grand Avenue, Suite 2500
Los Angeles, CA 90071
Phone: (213) 617-8100
Fax: (213) 617-7480

Representing: People of the State of California ex rel. County of Los Angeles

Castellon & Funderburk LLP
Ruben Castellon, Esq. (rcastellon@candffirm.com)
William Funderburk, Jr., Esq. (wfunderburk@candffirm.com)
Alastair Hamblin, Esq. (ahamblin@candffirm.com)
811 Wilshire Boulevard, Suite 1025
Los Angeles, CA 90071
Phone: (213) 623-7515

Representing: Anaplex Corporation

Clark Hill LLP
Christopher Foster, Esq. (cfoster@clarkhill.com)
1055 West Seventh Street, 24th Floor
Los Angeles, CA 90017
Phone: (213) 891-9100
Fax: (213) 488-1178

Representing: Lubeco, Inc.

Girardi & Keese
Joe Finnerty, Esq. (jfinnerty@girardikeese.com)
Robert Finnerty, Esq. (rfinnerty@girardikeese.com)
Michael Kelly, Esq. (mkelly@girardikeese.com)
1126 Wilshire Boulevard
Los Angeles, CA 90017
Phone: (213) 977-0211
Fax: (213) 481-1554

Representing: Allison Weiner
Damon Honaker
David Redd
Lori Gullien
Penelope Redd, a minor by and through her guardian ad litem, Allison Weiner
Susan Weiner, individually and on behalf of all others similarly situated

Huang Ybarra Gelberg & May LLP
Kevin Scott, Esq. (kevin.scott@hysmlaw.com)
Joseph Ybarra, Esq. (joseph.ybarra@hysmlaw.com)
550 S. Hope Street, Suite 1850
Los Angeles, CA 90071
Phone: (213) 884-4900

Representing: People of the State of California ex rel. South Coast Air Quality Management District

KJT Law Group, LLP
Casper Jivalagian, Esq. (casper@kjtlawgroup.com)
Vache Thomassian, Esq. (vache@kjtlawgroup.com)
230 N. Maryland Avenue, Suite 306
Glendale, CA 91206
Phone: (818) 507-8525
Fax: (818) 507-8588

Representing: Center for Environmental Health

Kutak Rock LLP
Jad Davis, Esq. (jad.davis@kutakrock.com)
Tessa Yutadco, Esq. (tessa.yutadco@kutakrock.com)
5 Park Plaza, Suite 1500
Irvine, CA 92614
Phone: (949) 417-0999
Fax: (949) 417-5394

Representing: Mattco Forge, Inc.

Latham & Watkins LLP
Joseph De Leon, Esq. (joseph.deleon@lw.com)
Monica Klosterman, Esq. (monica.klosterman@lw.com)
Michael Romey, Esq. (michael.romey@lw.com)
Jamie Sprague, Esq. (jamie.sprague@lw.com)
Kirk Wilkinson, Esq. (kirk.wilkinson@lw.com)
355 South Grand Avenue, Suite 100
Los Angeles, CA 90071
Phone: (213) 485-1234
Fax: (213) 891-8763

Representing: Aerocraft Heat Treating Company, Inc.
Carlton Forge Works, Inc.
Precision Castparts Corporation
Press Forge Company

Law Office of Babak Naficy
Jamie Garretson, Esq. (naficy.jamie@gmail.com)
Babak Naficy, Esq. (babaknaficy@sbcglobal.net)
1540 Marsh Street, Suite 110
San Luis Obispo, CA 93401
Phone: (805) 593-0926
Fax: (805) 593-0946

Representing: Doris Nichols, et al.

Law Office of Kurt S. Bollin
Kurt Bollin, Esq. (kurt@bollinlaw.com)
1506 Oak Street-D
South Pasadena, CA 91030
Phone: (818) 599-8020
Fax: (626) 399-0144

Representing: Doris Nichols, et al.

Lexington Law Group
Ryan Berghoff, Esq. (rberghoff@lexlawgroup.com)
Mark Todzo, Esq. (mtodzo@lexlawgroup.com)
503 Divisadero Street
San Francisco, CA 94117
Phone: (415) 913-7800
Fax: (415) 759-4112

Representing: Center for Environmental Health

Liddle & Dubin, P.C.
Nicholas Coulson, Esq. (ncoulson@ldclassaction.com)
Steven Liddle, Esq. (sliddle@ldclassaction.com)
975 E. Jefferson Avenue
Detroit, MI 48207
Phone: (313) 392-0015
Fax: (313) 392-0025

Representing: Eglossiree Norman, an individual, on behalf of herself; the general public and those similarly situated

Rutan & Tucker, LLP
Michael Adams, Esq. (madams@rutan.com)
Mark Frazier, Esq. (mfrazier@rutan.com)
611 Anton Boulevard, 14th Floor
Costa Mesa, CA 92626
Phone: (714) 641-5100
Fax: (714) 546-9035

Representing: Weber Metals, Inc.

South Coast Air Quality Management District
Barbara Baird, Esq. (bbaird@aqmd.gov)
Nicholas Sanchez, Esq. (nsanchez@aqmd.gov)
Kurt Wiese, Esq. (kwiese@aqmd.gov)
William Wong, Esq. (wwong@aqmd.gov)
21865 Copley Drive
Diamond Bar, CA 91765
Phone: (909) 396-3400
Fax: (909) 396-2963

Representing: People of the State of California ex rel. South Coast Air Quality Management District

Stoel Rives, LLP
Melissa Jones, Esq. (melissa.jones@stoel.com)
Bao Vu, Esq. (bao.vu@stoel.com)
500 Capitol Mall, Suite 1600
Sacramento, CA 95814

Representing: Aerocraft Heat Treating Company, Inc.
Carlton Forge Works, Inc.
Precision Castparts Corp.

Phone: (916) 447-0700
Fax: (916) 447-4781

Webb Law Group, APC
Lenden Webb, Esq. (lwebb@wblawgroup.com)
466 W. Fallbrook Avenue, Suite 102
Fresno, CA 93711
Phone: (559) 431-4888
Fax: (559) 821-4500

Representing: Erma Calzada, et al.